

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * * * * * * * * * * * * C.R. NO. 13-135M
UNITED STATES OF AMERICA *
*
VS. * JANUARY 23, 2015
* 10:00 A.M.
JOHN J. FALL *
* * * * * * * * * * * * * * * * PROVIDENCE, RI

BEFORE THE HONORABLE JOHN J. McCONNELL, JR.,
DISTRICT JUDGE
(Jury Trial -- Volume VII)
REDACTED

APPEARANCES:

FOR THE GOVERNMENT: JOHN N. KANE, ESQ.
JEFFREY BRIAN Bender, ESQ.
U.S. Department of Justice
Tax Division
601 D Street, N.W., 7th Floor
Washington, D.C. 20530

FOR THE DEFENDANT: JOHN J. FALL, PRO SE
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Cranston, RI 02920

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23 JANUARY 2015 -- 10:00 A.M.

(The jury is not present for the following:)

THE COURT: Good morning, everyone.

Let me just begin by handing Ms. McGuire what will be marked as Court's Exhibit 14, which is a note the CSOs received from Mr. Fall this morning upon entering the courthouse.

He also, I understand, filed something this morning that will be placed on ECF directly dealing with yesterday's proceedings.

My intention this morning is to bring Mr. Fall in without the jury to see if he is willing to abide by the Court order and answer the Government's questions on cross-examination and then see where we go from there.

Any objection to that procedure from the Government?

MR. BENDER: No, your Honor.

THE COURT: Mr. Fitzgerald, any objection to that procedure?

MR. FITZGERALD: No, your Honor.

THE COURT: Any other thoughts about how we should proceed?

MR. FITZGERALD: I don't have any other

1 thoughts. I'm sorry, your Honor.

2 THE COURT: Great. Would it make most sense,
3 Mr. Fitzgerald, for you to go and get Mr. Fall and
4 bring him in and have him come to the stand, or do you
5 want me to ask the marshals to do that?

6 MR. FITZGERALD: I think it might be easier to
7 call on the radio down the hall. I did talk to
8 Mr. Fall and I told him that before the jury was
9 brought in that you were going to ask him similar
10 questions from yesterday afternoon again. So he's
11 expecting to be called in.

12 THE COURT: Okay. Officer Palumbo, would you
13 instruct the marshals to have Mr. Fall come and take
14 the stand.

15 (Pause.)

16 JOHN J. FALL, Resumes Stand.

17 THE COURT: Good morning, Mr. Fall. Do you want
18 to remain standing? Is that still the best --

19 THE DEFENDANT: Yes, please.

20 THE COURT: Okay. Mr. Fall, you're still under
21 your obligation to tell the truth. You understand
22 that, correct?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Mr. Fall, yesterday you
25 protested and objected about your ability to answer

1 certain questions that were posed to you by the
2 Government during cross-examination, and the Court
3 instructed you to answer the questions after you placed
4 your objection and protestation on the record; and I'm
5 again instructing you that you have to obey the orders
6 of this Court and to answer the substantive questions
7 that the Government poses to you.

8 So I ask you this morning, are you prepared to
9 follow the orders of this Court and to substantively
10 answer the questions as posed to you by the
11 Government's attorney?

12 THE DEFENDANT: It's my belief, sir, that I'm
13 here to challenge jurisdiction of this matter because I
14 was appointed counsel that I did not consent to. The
15 counsel that was appointed to me spent no time with me
16 before the trial, has admitted to me he has no
17 experience winning a criminal trial in taxes, has
18 admitted to me he has no experience assisting a man in
19 common law; and as you know, I'm here as a man, only as
20 a man only in common law at all times.

21 I'm also challenging jurisdiction because there
22 is no accuser in this case. There is no sworn
23 statement of accusation. None. Everybody knows that
24 now. So it's their case that needs to be discharged,
25 and I require their case be discharged immediately.

1 There's seven more reasons I'm challenging
2 jurisdiction that I'd like to get on the record.

3 THE COURT: Mr. Fall, I have --

4 THE DEFENDANT: By the way, sir, I don't mean to
5 interrupt you, but you asked me a question.

6 THE COURT: I did and --

7 THE DEFENDANT: I have not received any orders
8 directed to the man, John Joseph Fall. I've not been
9 presented any orders.

10 THE COURT: Mr. Fall, I have many times in the
11 past and I am now again ordering that you,
12 notwithstanding your claimed inability to answer the
13 questions as posed, to in fact answer the questions
14 that the Government has posed to you on
15 cross-examination. And I'll ask you now, will you
16 assure me that you will -- now that your objection is
17 placed on the record to answering the question, will
18 you follow the Court's order and answer the questions
19 substantively as posed to you by the Government?

20 THE DEFENDANT: It's my belief that I did answer
21 the question.

22 THE COURT: It's this Court's ruling that you
23 didn't and has ordered you to answer the questions
24 substantively. Will you assure me now that you've
25 placed your objection on the record that you will

1 answer the Government's questions substantively as
2 ordered by this Court?

3 THE DEFENDANT: I have not received an order to
4 the man, John Joseph Fall. That's part of my answer.
5 The other part of my answer is I believe that I would
6 be committing fraud to answer a question that does not
7 relate to a sworn statement of accusation against me
8 saying I did wrong. And I'm not going to participate
9 in fraud.

10 THE COURT: Mr. Fall, do you further understand,
11 as I told you yesterday, that your continued refusal to
12 obey the orders of this Court and to answer the
13 questions substantively as posed to you by the
14 Government after the Court's ruling and instruction to
15 you could and will result in your direct testimony
16 before this jury being stricken, which means that they
17 will have no right or ability to consider anything that
18 you testified to yesterday. Do you understand that?

19 THE DEFENDANT: I do not consent to that. I do
20 not consent to the jurisdiction of your administrative
21 court, nor your statutes. I'm in common law. I'm a
22 man. I have a right to my jury. I have the right to
23 tell my sworn testimony to the jury unobstructed
24 without condition. And I know my rights, and I'm
25 asserting my rights. And by the way, counsel cannot

1 assert my rights. I'm here to assert my rights as a
2 man.

3 THE COURT: Thank you, Mr. Fall.

4 This Court rules as follows: Mr. Fall has
5 answered many questions on direct examination before
6 the jury, including when his attorney addressed him as
7 Mr. Fall. When the Government addressed him as
8 Mr. Fall at the beginning of its cross-examination of
9 Mr. Fall, he would not answer the questions and
10 protested that form of address, denying that he was, in
11 fact, Mr. Fall.

12 Moreover, on direct examination, Mr. Fall gave
13 straight-forward answers to questions about whether he
14 had used any other names by denying that he had. When
15 asked on cross-examination whether he had used any
16 aliases, Mr. Fall protested the question and said he
17 would not answer the question even after being
18 instructed by this Court to answer the questions
19 substantively.

20 This Court finds that Mr. Fall's evasiveness on
21 cross-examination and his continued refusal to answer
22 questions responsibly constitutes deliberate
23 manipulation on his part in an effort to make his
24 testimony as favorable as possible.

25 I also find his evasiveness deprives the

1 Government of an opportunity to meaningfully
2 cross-examine him. I've warned Mr. Fall repeatedly
3 that his failure to answer questions put to him after
4 being ordered by this Court to do so could result in
5 his direct testimony being stricken from the record;
6 and if that happened, the jury would not be allowed to
7 consider it. In spite of that warning, Mr. Fall has
8 persisted.

9 Does the Government have a motion?

10 MR. BENDER: Yes, your Honor. The Government
11 moves to strike the testimony of Mr. Fall.

12 MR. FITZGERALD: Mr. Fitzgerald?

13 THE DEFENDANT: I do not consent and
14 Mr. Fitzgerald is not my counsel.

15 THE COURT: Mr. Fall, I'm going to hear from
16 your counsel now.

17 Mr. Fitzgerald?

18 THE DEFENDANT: He's not my counsel. I'm saying
19 it under affirmation here. He's not my counsel.

20 THE COURT: Mr. Fall --

21 THE DEFENDANT: I've never consented to him
22 being my counsel. Ever.

23 THE COURT: Mr. Fall, please stop talking now.
24 I'm going to hear from your counsel.

25 THE DEFENDANT: I require my choice of counsel,

1 my choice of assistance of counsel.

2 THE COURT: Marshals, please remove Mr. Fall
3 from the courtroom.

4 THE DEFENDANT: Let the record show that I'm
5 being forcibly removed from the Court against my will
6 over my objection, that my right to redress grievances
7 have been deprived and my right to due process of law
8 has been deprived.

9 THE COURT: Mr. Fitzgerald?

10 MR. FITZGERALD: Your Honor, I've got --

11 THE COURT: Why don't you hold on until I'm sure
12 that Mr. Fall is in Courtroom 4 with live video and
13 audio feed.

14 (Pause.)

15 THE COURT: Officer Palumbo, can you report to
16 me that Mr. Fall is in Courtroom Number 4 and that the
17 live video and audio feed are working?

18 COURT SECURITY OFFICER: Yes, your Honor.

19 THE COURT: Thank you, Officer Palumbo.

20 Mr. Fitzgerald?

21 MR. FITZGERALD: Your Honor, I'm going to object
22 to his testimony being stricken. I'm objecting to him
23 not being allowed to further -- or to continue his
24 testimony -- to further continue his testimony, your
25 Honor. Both of those rulings would impact his

1 constitutional rights, his right to defend himself, his
2 right to testify, and I'm objecting to the Court and
3 the Government essentially taking those rights away
4 from him in this situation.

5 THE COURT: Thank you, Mr. Fitzgerald.

6 The Court is going to grant the Government's
7 motion to strike. I'm striking his testimony from the
8 record. I find, specifically, this Court makes a
9 finding that his conduct was knowing and intelligent
10 and voluntary and that his knowing, intelligent,
11 voluntary waiver of his constitutional right to testify
12 was pursuant to those actions.

13 MR. FITZGERALD: Your Honor, I have a motion. I
14 move for a mistrial at this point.

15 THE COURT: Motion is denied.

16 Do either side -- I'll deal with the -- my
17 plan -- what would the Government like me to say to the
18 jury other than that I've stricken the testimony?

19 MR. BENDER: Thank you, your Honor. The
20 Government looked at some cases about striking
21 testimony, United States versus Bartello, 129 F.3d 663,
22 a First Circuit case.

23 THE COURT: Are you going to hand anything to
24 me?

25 MR. BENDER: Yes, your Honor. There's copies

1 for everybody.

2 THE COURT: Thank you.

3 MR. BENDER: I'm at page six of the document I
4 just handed, which is page 673 of the case. And the
5 case basically just explains the right of Government's
6 cross-examination of a Defendant in this case, and it
7 just says that the right is subject -- the Defendant's
8 right to testify is subject to the Government's
9 legitimate interest in testing the truth of the
10 testimony offered by the defense through
11 cross-examination.

12 And simply, the Government would ask that the
13 Court instruct the jury that the Government was
14 deprived of its interests in testing the truth of the
15 direct testimony through cross-examination; and as a
16 result, the Court struck the testimony and the jury
17 cannot consider that testimony in their deliberations.

18 THE COURT: That's a reasonable instruction.

19 Mr. Fitzgerald, any comment on the instruction?

20 MR. FITZGERALD: Yes, that the Government has
21 been deprived of some right. I don't want it put that
22 way to the jury. They did see his testimony yesterday.
23 I think it's safe to essentially just say his testimony
24 is being stricken. If we say he's being deprived now,
25 you know, it's his fault and I think that makes the

1 situation even worse.

2 THE COURT: Okay. My intention is to call the
3 jury in now, give them an instruction on striking of
4 the testimony. I'll then ask Mr. Fitzgerald if he has
5 anything further. I'm assuming that you will then rest
6 at that point. I'll ask the Government if there's any
7 rebuttal, though actually there wouldn't be any
8 rebuttal because I struck the Defendant's case so there
9 wouldn't be any rebuttal. I'm thinking a little out
10 loud here, if that's not obvious.

11 And then I am intending to release the jury
12 for -- until one o'clock?

13 MR. FITZGERALD: That's what you said yesterday,
14 your Honor.

15 THE COURT: Does that make sense?

16 MR. FITZGERALD: Yes, that makes sense. That's
17 kind of what I planned on.

18 THE COURT: That would allow us a little period
19 of time to finalize the instructions. I'll have them
20 come back at 1:00, and we'll go right into closing
21 arguments.

22 Mr. Kane?

23 MR. KANE: Very well, your Honor.

24 Just on the instruction to the jury, does the
25 Court intend to say something about cross-examination

1 in addition to striking the testimony?

2 THE COURT: What do you mean?

3 MR. KANE: Mr. Bender mentioned that in addition
4 to saying the Court strikes the Defendant's testimony,
5 is the Court going to say in a sense very briefly, as
6 Mr. Bender pointed out, why, that the Government has
7 been deprived of the right of cross-examination
8 essentially?

9 THE COURT: I'm going to take a short break and
10 think about it. I'm going to actually write out what
11 I'm going to say so I can give it some thought, so I
12 don't know the answer to your question yet.

13 MR. KANE: Because otherwise, the jury -- they
14 obviously don't understand fully obviously the
15 important rights that we understand through
16 cross-examination, potentially the most important due
17 process right we have. And if you just strike it, the
18 jury might be left with the impression that some sort
19 of unfairness is befalling the Defendant.

20 MR. FITZGERALD: The Government doesn't have a
21 due process right. This is the second time that the
22 Government said that. They don't have due process
23 rights.

24 MR. KANE: To cross-examination?

25 MR. FITZGERALD: Do they have a right to

1 fairness to cross-examine? Yes, I get that. They
2 don't have a due process right.

3 THE COURT: Right. So perhaps what I'm thinking
4 about is saying that in light of the fact that the
5 Government did not conduct a full and complete
6 cross-examination of Mr. Fall that his direct testimony
7 is stricken, something to that effect, which attempts
8 not to highlight blame but rather explain to them the
9 reason for it, but they need some context for
10 understanding that it's stricken.

11 Warning to counsel for both sides, as I said
12 informally in chambers, implied informally in chambers
13 when we discussed this, I don't want any mention or any
14 inference by either side of anything that Mr. Fall said
15 because I've now stricken his testimony. That includes
16 the Government attempting in a way to address it.
17 Because as we know, I can instruct the jury to
18 disregard testimony but they've heard it, and I assume
19 and will order them to follow my instructions to put it
20 out of their minds. But I don't want anything seeping
21 in from the Government concerned that they actually
22 heard it and attempting to address anything that
23 Mr. Fall might have said. So I want you to be
24 particularly careful of that. It's easier for the
25 Defendant because they can't argue it at all. But if

1 the Government is going to attempt subtly to rebut
2 things that Mr. Fall said even though I've stricken his
3 testimony, I'm not going to allow it.

4 We'll be back in just a couple of minutes.

5 (Recess.)

6 (The jury is present for the following:)

7 THE COURT: Good morning, ladies and gentlemen.
8 How is everyone doing?

9 Let me ask you the usual questions. I gave you
10 certain instructions yesterday. Can I be assured that
11 all of you followed those instructions, that is you
12 didn't discuss this case amongst yourselves or with
13 anyone else; you didn't do any independent research,
14 and you stayed off social media about your jury service
15 or this case?

16 THE COURT: Great. All jurors have answered in
17 the affirmative.

18 Ladies and gentlemen, when we recessed
19 yesterday, Mr. Fall was on the stand and being
20 questioned by the Government. The Court has determined
21 that Mr. Fall's answers on cross-examination were
22 unresponsive; therefore, the Court halted the
23 examination, and I have now stricken from the record
24 the entirety of his testimony, both direct and cross.

25 I therefore instruct you that you are not to

1 consider his testimony at all. None of his testimony
2 given in this courtroom is evidence that is before you
3 appropriate for use during your deliberations.

4 Ladies and gentlemen, in light of that, and
5 where we are, let me talk schedule with you a little
6 bit.

7 We weren't anticipating, as you can imagine,
8 that we would be where we are right now. I need an
9 hour or two with the attorneys to finalize the legal
10 instructions or whatnot. It's part of the procedure we
11 go through to prepare for closing and the instructions.
12 So what I'd like to do and tell you is I'm going to
13 release you until one o'clock. You're welcome to stay
14 here and hang out with us. Not us, us, but in the
15 courthouse. You're welcome to go through downtown. I
16 would like you to take care of your lunch obligations
17 before then. What the plan is at one o'clock the
18 Government will close -- before we do that, I
19 apologize.

20 Mr. Fitzgerald, anything further for the
21 Defendant?

22 MR. FITZGERALD: No, your Honor. The defense
23 rests. Thank you.

24 THE COURT: Great. Thank you.

25 I needed to do that officially. The evidence

1 that you will have to deliberate is now complete before
2 you. The only thing remaining are the closing
3 arguments of counsel and then the instructions of law
4 that this Court will give you.

5 My intention is at one o'clock the Government
6 will present its closing argument to you. The defense
7 will then present its argument to you; and because as
8 I've told you all along that the burden of proof is on
9 the Government, they begin closing arguments and then
10 they have a right to rebut after the Defendant.

11 So the Government will close, argument, the
12 Defendant will close and then the Government has a
13 right to -- sort of the last word so to speak because
14 it's their burden. I will then instruct you on the law
15 and then you'll begin your deliberations this
16 afternoon.

17 So I apologize for the inconvenience and the
18 couple of hours that I'm giving you off. Continue not
19 to discuss this case. You have now heard all the
20 evidence. What you have not heard yet is the closing
21 arguments, and I'll tell you this a few times, closing
22 arguments are not evidence. They are argument. They
23 are the parties' attempt to persuade you toward their
24 understanding of the facts and how those facts apply to
25 the law and to argue to you what your verdict should

1 be. But it's not evidence. Anything that the
2 Government says, as was their opening statements, not
3 evidence. And then I will instruct you on the law that
4 you have to follow in applying it and then you'll begin
5 your deliberations.

6 So we will see you back here, and we will start
7 promptly with the Government's closing at 1:00 p.m.

8 (Recess at 10:30 a.m.)

9 (The jury is not present for the following:)

10 THE COURT: We have met, I've met with counsel
11 on a couple of occasions and we've exchanged back and
12 forth over jury instructions, and I've now distributed
13 what the Court intends to be the final instructions.

14 I'll offer this opportunity to the Government
15 and to Mr. Fitzgerald on Mr. Fall's behalf to state any
16 objections to the instructions that wish to be made.

17 Mr. Bender?

18 MR. BENDER: The Government doesn't have any
19 objections to the instructions but we spoke with
20 defense counsel and earlier defense counsel requested
21 an instruction for Count I about the jury must agree on
22 a specific obstructive act. And the Government and I
23 believe defense counsel would be agreeable to a similar
24 instruction for Count II, the jury must agree,
25 unanimously agree on a specific affirmative act. So

1 we're looking at page 10.

2 THE COURT: Of what was once the final version?

3 MR. BENDER: Correct. Yes, your Honor. The
4 paragraph that ends on the top of page 10 discusses
5 affirmative acts of evasion, and perhaps adding a
6 sentence that "the jury must unanimously agree on a
7 specific affirmative act" to the end of that paragraph
8 might be appropriate.

9 THE COURT: You want it to read that the jury
10 must agree, unanimously agree?

11 MR. BENDER: Correct.

12 THE COURT: Agree on what?

13 MR. BENDER: On a specific affirmative act.

14 THE COURT: Okay.

15 MR. BENDER: But no objections to the
16 instructions from the Government, your Honor.

17 THE COURT: Okay. Mr. Fitzgerald?

18 MR. FITZGERALD: That would be the end of that
19 paragraph that ends at the top of page 10?

20 THE COURT: Correct. Where it says, "Revenue
21 service or conceal income period," and then the
22 sentence is added.

23 MR. FITZGERALD: Correct. Other than that, I
24 have no objections.

25 THE COURT: Great. Well, I'm going to make that

1 change and I will -- don't go anywhere because as soon
2 as I come back we'll call the jury in.

3 (Pause.)

4 THE COURT: Just before the jury comes in
5 there's another note from Mr. Fall that he gave the
6 Court security officers that will be marked as Court's
7 Exhibit 15.

8 With that, let's get the jury in.

9 MR. BENDER: Your Honor, could we just note that
10 the Defendant is -- whether he's present in Courtroom 4
11 for this?

12 THE COURT: We'll have to wait for Officer
13 Palumbo, but we'll certainly do that when he gets in.

14 MR. BENDER: Thank you.

15 (Pause.)

16 THE COURT: Officer Palumbo, can you verify for
17 me that Courtroom 4 is available with a live video and
18 audio feed and that Mr. Fall is present in Courtroom
19 Number 4?

20 COURT SECURITY OFFICER: Yes.

21 THE COURT: Great. Thank you.

22 Would you bring the jury in, please.

23 COURT SECURITY OFFICER: Yes.

24 THE COURT: We're off the record.

25 (Discussion off the record.)

(The jury is present for the following:)

THE COURT: Welcome back, ladies and gentlemen.

Can you again assure me that you have followed
the Court's instructions?

Great. All the jurors have affirmed that that was the case.

Ladies and gentlemen, as I told you before, we are entering the argument stage on the case. The Government will get up shortly and present its closing argument to you. We'll probably take a break after that and then the Defendant will come and argue to you, and then the Court will instruct you on the law.

Again, I instruct you arguments of counsel are not evidence. You have now heard all the evidence. I don't mean to downplay the arguments. They are oftentimes very helpful in attempting to help you with what the facts are that you are to determine, so just remember they are not evidence. The evidence you have heard or seen or will see when you deliberate.

With that, Mr. Kane on behalf of the Government.

MR. KANE: Thank you, your Honor.

Your Honor, may it please the Court, counsel, members of the jury: John Fall filed taxes before. He filed taxes for the better part of his adult life, up until 1998. He knew what the law was. He knows what

1 the law is. He knows what you know. He knows what we
2 all know. When it comes to April of every year, the
3 tax laws of the United States requires the filing of
4 tax returns and the payment of taxes.

5 But John Fall didn't want to pay taxes anymore
6 come 1998. As he stated in Exhibit 71-F, and if I can
7 have that up, please.

8 As he stated in Exhibit 71-F, "Haven't filed
9 since 1998 and never will."

10 And so this Defendant embarked on a decade-long
11 campaign to defy the law, to defy the IRS at every
12 turn. He did this with respect to his own taxes. He
13 did this with respect to his wife's taxes. He did this
14 through numerous layers of concealment, through
15 numerous deceptions and deceits and falsehoods
16 including the use of fake names and aliases. And when
17 the IRS caught up to him, when the IRS got leads on his
18 income and determined that his wife's returns were
19 false, what did he do? Did he come clean? Did he
20 cooperate with the IRS? No. He employed what he
21 called his technology. He papered the IRS with
22 frivolous nonsense, what he knew was frivolous nonsense
23 all in an effort to delay and impede the audits and the
24 examinations. All in an effort to harass the agents
25 who were simply doing their jobs.

1 The IRS warned him against all of this multiple
2 times going back as early as 2002. Notice after
3 notice, warning after warning telling him what he
4 already knew, that the tax laws of the United States
5 required the filing of tax returns and the payment of
6 taxes; telling him that if he continued down the path
7 he had chosen, he could be prosecuted. And the IRS
8 told him that multiple times. But the Defendant
9 continued to defy the law.

10 So deep and profound was this Defendant's
11 philosophical disagreements with the IRS and the tax
12 laws that he proclaimed himself in filings with the
13 Providence City Hall a sovereign citizen, a sovereign
14 living soul, in effect suggesting he's beyond the rule
15 of law, that he's not a United States citizen.

16 But as this Court will instruct you, a
17 disagreement with the law, however deep and sincere, is
18 not a defense to the charges. It is everyone's duty to
19 obey the law.

20 In pursuing his decade-long campaign against the
21 IRS and against the tax laws in his corrupt endeavors
22 to hide and conceal, the Defendant broke the law
23 multiple times, and he did so willfully. For that, he
24 must be held accountable.

25 Members of the jury, there are four charges for

1 your consideration, four counts in the Indictment.

2 Count I alleges that the Defendant between 1999
3 and 2010 corruptly endeavored to obstruct and impede
4 the IRS. The count alleges essentially everything you
5 heard about during trial, all of his conduct with
6 respect to his taxes and with respect to his wife's
7 taxes. This count also charges that he obstructed the
8 audit after the filing of his wife's taxes by
9 submitting false paperwork through an accountant and to
10 the IRS; by telling his wife not to comply with an IRS
11 summons, as well as other obstructive acts. That's
12 Count I.

13 Count II is tax evasion. It charges the
14 Defendant with evading the payment of his taxes for
15 1998, '99 and 2000. If you recall the evidence, the
16 Defendant willfully failed to file his returns for
17 those years. The IRS caught a lead on his income
18 through those W-2s and 1099s hitting the system. They
19 proposed an assessment. He filed frivolous paperwork.
20 The IRS kept coming. He decided to file returns. He
21 filed false returns. They audited those returns. They
22 worked up their assessment. They told him what the
23 assessment would be. They gave him an opportunity to
24 challenge it, to appeal it, to even take it to tax
25 court. He didn't do so. Those assessments became

1 final in 2005 and 2006.

2 Count II charges that after that point, between
3 2005 and 2010, he evaded the payment of those taxes by
4 engaging in numerous acts of concealment, the same
5 obstructive acts as charged in Count I, multiple
6 entities, multiple fake names, multiple bank accounts
7 and additional obstructive acts, additional affirmative
8 acts. That's Count II.

9 Count III and IV essentially charge the same
10 violation, that the Defendant aided and assisted in the
11 false returns of Comfort Dental for 2006 and 2007, and
12 specifically with respect to advertising expenses.

13 Let's take a look at those last counts first,
14 the aiding and assisting counts. And these counts boil
15 down to essentially two questions for you to answer.
16 First, were those returns false in terms of
17 advertising; and second, did the Defendant willfully
18 cause or participate or provide information that led to
19 those false items, those false advertising deductions.

20 As the Court will instruct you, it's not
21 necessary that the Defendant actually physically
22 prepared those returns or that he actually signed those
23 returns. All that is necessary is proof that the
24 Defendant provided false information or directions with
25 the expectation that the information he provided would

1 be used to file a tax return.

2 So let's take a look at the first question, were
3 those returns false? There can be no serious question
4 that they were. To begin, there was an audit of those
5 returns. And everybody agreed in that audit that those
6 returns were false. You heard from two accountants,
7 Larry Rosen and Brian Tortolano, who came in into the
8 audit; and as Brian Tortolano testified, it's their job
9 to represent the taxpayer. They had an interest, as he
10 said, to prove the IRS wrong. And as he testified,
11 these expenses didn't exist. The advertising expenses
12 were not true, and so they agreed with the IRS
13 examination and proposed changes.

14 Carmen Sanchez testified that these advertising
15 expenses were not true. She testified that no services
16 were provided by Washington Allocation or JV Services,
17 and she ran the dentistry but she also testified that
18 she handled the communications and the advertising in
19 her community, that she provided the script, that she
20 worked with SuperMax and Cumbre Communications, the
21 actual advertisers that provided services to Comfort
22 Dental.

23 Ken Cournoyer, obviously the IRS agent who did
24 the audit. He tried to find information on these
25 companies. He tried to find contact information,

1 telephone numbers. They didn't exist.

2 How else do you know these returns were false in
3 terms of advertising? Those invoices that were used to
4 substantiate the deductions.

5 Let's have 301-H.

6 These are examples of both the JV Services and
7 the Washington Allocation invoices, very similar PO
8 boxes in Texas. As one witness I think testified,
9 these were basically pro forma printouts, appear to be
10 printouts from QuickBooks. Repeatedly everybody asked
11 John Fall, as well as others, where is the contact
12 information for these companies, where are these
13 companies, where is additional proof that they even
14 exist? And none was forthcoming.

15 As Ken Cournoyer with the IRS testified, on
16 their face these invoices are suspicious. The lack of
17 contact information and the fact that the amounts are
18 tied to the revenues of the business, which is unlike
19 all the other advertising expenses which charge for a
20 finite or a definite amount of time that is on the air.
21 But these are tied to the revenues because John Fall
22 set up those payments on an automatic basis, as I think
23 he said in one document, that would continue every
24 month.

25 How else do you know that the returns were

1 false? In addition to the fake invoices and in
2 addition to everybody agreeing at the audit that these
3 expenses were fake, you saw the true disposition of
4 these funds, and most of them did not go to
5 advertising.

6 Let's take a look at Exhibit 421-E. And I think
7 I have a blowup for this.

8 This is a demonstrative that Agent Pleshaw
9 testified to. And you also saw the long form summaries
10 entered into evidence for the JV Services account down
11 in Texas.

12 First of all, why is there advertising going on
13 down in Texas, using a company down in Texas when the
14 advertising was local with local radio stations? But
15 in any event, the money didn't go to advertising, or at
16 least most of it didn't. It goes into an account in
17 Texas in the name of JV Services; and then from there,
18 as the testimony came out, John Fall had sent on to the
19 actual advertisers about \$48,000 over those years. The
20 remainder of those funds go up to his warehouse
21 accounts, including warehouse accounts in Iowa. Did
22 not go to advertising. And the amounts that did go to
23 advertising were accounted for in the adjustments at
24 the audit.

25 The fact that JV Services just turned around and

1 sent the money right back to Cumbre Communications and
2 SuperMax shows they didn't provide any service at all.
3 Basically, John Fall sent this money into an account he
4 controlled and then took a cut and sent it up to his
5 warehouse accounts in Iowa.

6 So at the end of the day -- if I can have 423,
7 please.

8 This is a summary of the adjustments that Agent
9 Pleshaw testified to. For 2006, 58,000 and change; and
10 for 2007, 20,000 and change, basically over-statements
11 of the advertising.

12 The evidence at trial also showed that there
13 were false advertising expenses for 2005, but the
14 counts in the indictment relate to 2006 and 2007, at
15 least as to Counts III and IV.

16 All right. The second question: Did John Fall
17 participate in causing these false expenses?

18 To begin, the testimony was did he have an
19 office at Broad Street upstairs, that he participated
20 in the financial affairs of his wife. Now, when it
21 came time to learning about these expenses, everybody
22 turned to John Fall.

23 You heard testimony from Cielito Deayala, and
24 you saw documents sent to Cielito Deayala.

25 Let's have 287-C, please.

1 This relates to equipment leasing, which was
2 another false item on these returns that relates to the
3 obstruction count, but this document shows, and you can
4 see the fax header at the top right of the page, that
5 John Fall had direct contact with the bookkeepers of
6 the business. He was directing these expenses. He was
7 causing these expenses and not only causing these
8 payments, but he was directing the characterization of
9 these payments as leasing expenses, which ended up on
10 the returns as false items.

11 Let's have Exhibit 110-A, please.

12 You heard Cielito Deayala talk about this
13 document. This is an envelope containing tax
14 information. If you look at the next pages after this
15 document or after the first page, they're QuickBook
16 reports on some of these expenses. And Cielito Deayala
17 testified this envelope was given to John Fall and
18 that's her handwriting.

19 Let's have 287-B.

20 Carmen Sanchez testified to this document. This
21 was an instruction sheet for payments that John
22 prepared. Many exclamation points throughout this one,
23 which was a characteristic of his text and writings,
24 especially in all those documents that came from the
25 George Jaquez disks.

1 Additional evidence showing that he caused or
2 participated in causing these false items, you heard
3 testimony from Viva Johnson. She said that he
4 participated in Broad Street. She had interactions
5 with him on Broad Street and that when there were
6 questions about these particular advertising expenses
7 and the expenses with Washington Allocation, she spoke
8 to John.

9 And let's take a look at Exhibit 299-A. In this
10 particular case, John told her not to make the payment.
11 "Per John, do not pay." Showing you that he was
12 directly involved in these expenses and causing them to
13 be sent and to be recorded as false expenses.

14 You heard testimony from Ken Cournoyer, the
15 agent. He testified that when Carmen Sanchez was
16 ordered to appear for a summons after her husband told
17 her not to appear, John Fall came with her and he
18 started asking questions about these expenses, and she
19 didn't know anything about the expenses and she turned
20 to John Fall for answers, "Tell them, John."

21 Additional evidence he caused these expenses.

22 All the evidence showing John Fall's anti-tax
23 rhetoric and research, all of his efforts to try to
24 hide and conceal, and you'll find that evidence from
25 George Jaquez disks, the documents taken off those

1 disks that Agent Dickerman testified to, and they can
2 be found between 62 and 98, and I'm going to show you a
3 few here today.

4 Extensive research on how to hide assets,
5 extensive research on using aliases, extensive research
6 on how to go about disappearing showing you that he, of
7 course, was the one behind these expenses.

8 In addition, JV Services itself was his company.
9 He's the one that set it up in Nevada, the super-secret
10 state that he researched.

11 Let's have 141-B and 141-D. These are the
12 formation papers in Nevada for both Washington
13 Allocation and JV Services.

14 The names and the nominees and the officers used
15 are names and nominees tied to him, Consignment
16 Partners, Thomas Brown. Those are him.

17 Let's have his cheat sheet up, if we can. 60-A.

18 Found in a room at Broad Street that he left
19 behind, a room that George Jaquez testified in no
20 uncertain terms that John Fall is the only one who had
21 access to. Creating a list of names, companies and
22 even in the left-hand side his warehouse banks. He had
23 so many he had to keep it straight on his cheat sheet.
24 And obviously, one of those names is Thomas Brown.

25 71-I, please.

1 And here's a document from the George Jaquez
2 disks, some of the research, just one example. Nevada,
3 the super-secret state, no disclosure with the IRS.
4 Establishing companies in Nevada can help you keep a
5 low profile. Additional evidence that he caused these
6 expenses. Not only did he control and set up these
7 companies, he controlled the bank accounts.

8 Again, not only do the bank accounts show the
9 expenses didn't go to advertising, but he set up the
10 company; he set up the bank account in Texas, a bank
11 where he had three other accounts, and he had an
12 additional account at another bank in Texas. And if
13 you look at the summaries of those bank records, you
14 see funds of his and Comfort Dental's going into his
15 accounts showing that he controlled the company and he
16 controlled the money.

17 In addition, of course you heard from Carmen.
18 Carmen said it was John's idea to have these payments,
19 that these entities didn't provide any services, that
20 it was him. She testified credibly. And the
21 Government is not asking you to rely on her testimony
22 alone. There is all sorts of evidence in the documents
23 and in the other testimony of witnesses that
24 corroborate what she says.

25 In addition, his involvement in the audit.

1 After the returns were filed, the returns were audited.
2 And when it came time to represent Comfort Dental,
3 remember Bill Harrigan's testimony. Usually he goes to
4 the bookkeeper in the business and he tried to work with
5 Veva Johnson in this case. But very shortly after the
6 audit started, the point person became John Fall, which
7 shows you he knew what these expenses were about. When
8 there were questions about these expense, the point
9 person was John Fall.

10 Let's have 301-E up.

11 Just one example of the correspondence between
12 Bill Harrigan and John Fall, a letter or e-mail from
13 Bill Harrigan and John Joseph Fall. The IRS was asking
14 questions on what these expenses were all about.
15 Where's the support? Where's the proof? And he sets
16 forth his false justifications for JV Services and
17 Washington Allocation, and he explains that these were
18 on an automatic pilot. They were on an automatic pilot
19 set up either months or years ago. Years ago. Three
20 years ago. Automatic pilot.

21 When there were questions about these expenses,
22 people went to John Fall. And not only did he provide
23 information or answer questions, he also provided false
24 documentation.

25 Exhibit 304.

1 This is the false script or justification of a
2 script sent to a John, John Fall, from a Paul Swanson.
3 Paul Swanson being one of his fake names and aliases.
4 A document that was supposed to allegedly substantiate
5 the advertising expense explaining that JV Services
6 provided the script, but Carmen Sanchez testified that
7 one of the things she did in the business was to handle
8 the advertising. She handled the script. She dealt
9 with SuperMax and Cumbre Communications. This document
10 was utterly and completely false. And we know it was
11 false in addition because the name, Paul Swanson,
12 appears on one of those stamps. There was a signature
13 stamp for Paul Swanson found in that room where only
14 John Fall had access.

15 In addition, Paul Swanson appears on the cheat
16 sheet, 60-A, the cheat sheet found in a room where only
17 John Fall had access.

18 And you know this cheat sheet is his not only
19 because he had access, the only access to that room,
20 but with that cheat sheet were the stamps as well as
21 those George Jaquez disks. And if you look at the
22 documents, he's identified all over the documents as
23 being the author. Those disks were his, the cheat
24 sheet was his.

25 And finally, final information and evidence

1 showing that he was behind these expenses is the fact
2 that not only did he falsify the advertising expenses,
3 but he falsified other expenses as well. The leasing
4 expenses as well as false deductions on the personal
5 returns of Carmen Sanchez showing you that the false
6 advertising expenses were not a mistake and that he was
7 behind the falsification of these returns.

8 Let's have 424, please.

9 This is a summary of the leasing adjustments by
10 Agent Pleshaw. And if you recall the testimony, before
11 the advertising expenses there were false deductions
12 for leasing expenses related to an asset allegedly
13 purchased or leased from Managed Skills. The evidence
14 is that that company did not exist, did not provide
15 services. Everybody testified to that. The
16 accountants, Carmen, there was no such asset.
17 Substantiation was requested. It was never provided.
18 First, allegedly it was being leased and that was the
19 justification for the expense, and then there was this
20 alleged buyout agreement and John Fall provided false
21 documentation in the audit on that, and then there was
22 a depreciation expense. The evidence is overwhelming
23 that this company provided nothing and these expenses
24 were false.

25 And we know John Fall was behind these leasing

1 expenses as well. If we look at 87-B, this is his
2 internal accounting record of these expenses found on
3 the George Jaquez disks. Income and outgo for Comfort
4 Dental. He's tracking the payments out of Comfort
5 Dental to his various companies, including Managed
6 Skills, Professional Equipment and Profit Management.
7 And how does he list these expenses? As expenses that
8 ended up on the return.

9 You heard testimony about the false return for
10 2005, the personal return of Carmen Sanchez.

11 If we can have that up, 8-A at page 1 and 7.

12 Washington Allocation expenses appear not only
13 on the corporate returns but on the personal return as
14 well for 2005.

15 You also heard testimony that Carmen Sanchez
16 essentially had head-of-household filing status through
17 three or four years when David Seidman was the
18 preparer, even though they lived together all for about
19 a year when she moved to Providence. That was false.

20 So members of the jury, that's Counts III and
21 IV. The returns were false, and John Fall was behind
22 the falsities and he willfully caused the falsities.

23 Let's now go back to Count I, the obstruction
24 charge. Again, this charge basically alleges -- it's
25 an all-encompassing charge alleging that he obstructed

1 the IRS with respect to his taxes and with respect to
2 her taxes. In addition, it alleges that he obstructed
3 the audit.

4 Now, if you find the Defendant guilty on Counts
5 III and IV, you may also find him guilty on Count I
6 because as part of Count I we charge the falsification
7 of those corporate returns.

8 In addition, he obstructed the audit. We've
9 already talked about the false documentation that he
10 provided during that audit.

11 Let's have 307-B.

12 This is another piece of -- this is another
13 document he provided that was false supposedly
14 substantiating the Managed Skill deduction and that was
15 false according to the witnesses and the documents.

16 So if you find that he falsified the returns of
17 Comfort Dental or obstructed the audit, you may find
18 him guilty on Count I. And as the Court will instruct
19 you, the Government need only prove one obstructive act
20 with respect to Count I.

21 In addition, he obstructed the audit by telling
22 Carmen Sanchez not to show up at a summons, encouraged
23 her not to comply with the tax laws and the IRS. And
24 the testimony from her was very clear, "He told me not
25 to go." And that forced an enforcement action before

1 the United States District Court for the District of
2 Rhode Island, and she was ordered to appear. That was
3 an obstruction.

4 So now let's talk about the broader conduct
5 alleged in Count I, which is the fact that he tried to
6 obstruct the IRS with respect to his income and his
7 wife's proper deductions and income.

8 To sum up his scheme, it was hide and harass.
9 Two words, hide and harass. He hid by creating
10 multiple layers of concealment to distance himself from
11 his assets and income. He harassed when the IRS caught
12 up to him. He filed mountains of frivolous paper in an
13 effort to stop and impede and intimidate agents hoping
14 the audit would either be delayed or would go away.

15 Let's talk about the hiding first and what was
16 he hiding. The evidence is he was in income-producing
17 activities. He was in real estate, he owned property,
18 he earned rent, he was a real estate broker. You saw
19 that in the license that was offered into evidence. He
20 also told people that he made money.

21 Let's have 71-F, please.

22 This is actually an internal memo he had, found
23 on the George Jaquez disks, in which he states he made
24 \$150,000, 90,000 of it which was profit.

25 Let's go to 248-A.

1 A life insurance policy that he applied for.
2 Annual income, \$104,000 he represents. And he takes
3 the policy out in the name of Profit Management, one of
4 his entities.

5 387-A. This is the financing for the Lexus, an
6 application. The scanned copy is not the best. The
7 hard copy you'll be able to read better, but down at
8 the bottom he represents he makes \$8,000 a month, which
9 is about \$96,000 a year.

10 You saw evidence that he owned Ohio Street and
11 tried to transfer it into different nominees before he
12 sold it to the McGraths and then had the payoff sent to
13 Eleganza Leasing, which was one of his entities, having
14 that payoff sent across the country to the State of
15 Washington.

16 You saw bank accounts with multiple deposits and
17 payments tied to him. The Defendant made money.

18 But the Court will instruct you we don't have to
19 prove how much, and we don't have to prove a tax loss
20 with respect to Count I. The point of Count I is that
21 the Defendant tried to obstruct the IRS from even
22 finding out what his income and taxes would be.

23 So let's talk about the layers of concealment.
24 Multiple, multiple layers. Step one, his multiple
25 entities and shell companies.

1 And if we could have that chart up, please.

2 By our count, at least 16 different entities

3 tied to this Defendant, entities set up to create

4 distance between himself and any assets and income.

5 Multiple entities to disguise his income and assets.

6 Revenue Management Services, that was him.

7 Let's have 68-A.

8 A document found on the George Jaquez disks, one

9 of the many, showing that he lists himself as a general

10 partner. We know what that means. He owned and

11 controlled this entity. And all of these entities

12 didn't file tax returns. With respect to except for

13 one, NERH the record shows that he filed one in 2005

14 and reported no taxes and no income. Other than that,

15 these entities did not file. Managed Skills, Profit

16 Management, Stratford Management, some of these other

17 entities, those were him.

18 Let's take a look at Exhibit 41.

19 This is the intake sheet found at Melissa

20 Sugar's business when there was an execution of a

21 search warrant when she was investigated. This sheet

22 shows that he was a client of Melissa Sugar. And

23 Melissa Sugar helped him set up an account in Colorado

24 in the name of Stratford Management where he used not

25 only Stratford Management but all of these entities.

1 And as you can see from the document, these were John
2 Fall's entities.

3 Eleganza Leasing, Venture Lending, those were
4 him.

5 Let's have the cheat sheet again, 60-A.

6 Listing Eleganza Leasing and Venture Lending.

7 And you saw the check, payoff check for the Ohio Street
8 sale go to Olympic Business Systems in Washington.

9 Washington Allocation, JV Services, we've
10 already talked about them. Those were him. NERH, that
11 was his company.

12 141-A, please.

13 The Secretary of State filing for NERH, again,
14 using Thomas Brown and Consignment Partners as officers
15 and representatives, those names being found in his
16 room or in the room that he had access to at Broad
17 Street.

18 Exhibit 251-A, a bank account he opened up at
19 Fidelity, a retirement account in the name of NERH
20 under his name, John Fall.

21 And of course, you saw the bank account evidence
22 of NERH where his funds are going into accounts in the
23 name of NERH. Not only did he use multiple entities,
24 but he changed the entities over time.

25 If we can have that chart up.

1 In the early years, he used Revenue Management
2 Services, and then he used multiple entities for a
3 period of time, and then he switched to JV Services and
4 Washington Allocation and NERH to add another layer of
5 concealment, changing companies, putting them on the
6 shelf, making them less visible.

7 So that's one layer. Multiple entities, 16 by
8 our count where the Defendant set up these entities to
9 conceal assets and income. And if you look again at
10 Exhibit 62 through 98 if you need to, we went through a
11 lot of them with Agent Dickerman's testimony, you'll
12 see the efforts he went to create all these entities
13 confirming that they were all his.

14 Step two, multiple bank accounts. Not only
15 multiple bank accounts, but bank accounts throughout
16 the entire country.

17 Let's have that chart, please.

18 Numerous bank accounts he had funds sent to
19 throughout the country. Bank accounts that don't have
20 his name on them. Bank accounts in Washington, in
21 Iowa, in Colorado, in Texas, in Maryland. You heard
22 Ken Cournoyer say he found an account in Georgia. He's
23 having funds sent out from Providence through these
24 various bank accounts all in order to reduce his paper
25 trail. None of the accounts bear his name, all in the

1 name of nominees and some of these accounts were what
2 you heard were co-mingled or warehouse bank accounts
3 where they weren't just his funds, but they were other
4 people's funds making it difficult to trace the source
5 of funds. Not only that, but he also moved money
6 between these accounts making it even more difficult to
7 trace.

8 Members of the jury, who banks this way? Who
9 banks this way? Nobody banks this way. He had no
10 legitimate purpose to do this. He had no property in
11 these states. He had no business in these states. You
12 heard Carmen testify that he may have traveled to
13 Panama once, but he didn't go to these states. No
14 reason for this other than to conceal and to hide
15 assets and income. And it was an elaborate way to do
16 it. An elaborate way to do it. Multiple bank
17 accounts.

18 The next step, the next layer, multiple fake
19 names and aliases to create more distance.

20 If we could have that chart, please.

21 The Defendant used multiple names and aliases to
22 create further distance between his assets and income.
23 You'll find again on the George Jaquez disks research
24 on how to use aliases, admissions by him that he was
25 using aliases, and those were in a number of the

1 documents. John Johnson, that's him.

2 You can put that down.

3 John Jonathan, that's John Fall.

4 If I can have 301-L, please.

5 An e-mail between John Fall and Bill Harrigan.

6 And you saw multiple e-mails between Bill Harrigan and
7 John Fall where he's using John Jonathan. And there's
8 only one reason he's doing that, to use aliases to
9 conceal his identity and to minimize papers trails.

10 Thomas Brown and Robert Johnson, we talked a
11 little bit about that already. Those were him. Again,
12 the cheat sheet had those names on it, the cheat sheet
13 found in a room where only John Fall had access.

14 The signature stamp in the name of Robert
15 Johnson, that's at 60-D.

16 And then there's 70-B again from the George
17 Jaquez disks, an e-mail that John Fall sent to somebody
18 who apparently was helping him create fake IDs
19 basically asking to create fake IDs for Robert Johnson
20 and the name Thomas Brown suggesting that he would use
21 stock photos of a younger man and an older guy and also
22 using addresses for the ID possibly out in Arizona.
23 E-mail from John Fall. And of course, that fake ID he
24 had created was found in the room where only he had
25 access on the George Jaquez disks, 70-D.

1 John Cusick, the name John Cusick, that's him.

2 That's John Fall. 280 at page 5.

3 E-mails, you heard testimony from Lou Caccavaro
4 and Veva Johnson who testified that John Cusick was on
5 the e-mails that they had in communications with John
6 Fall. Why is he using John Cusick in e-mails? Why is
7 he using John Jonathan in e-mails? Why is he not using
8 his own name? Because he's trying to stay under the
9 radar.

10 Bob MacNeil, that's him. 104-D at page 2.

11 Smart Buyer letterhead, tied to his address at Ohio
12 Street, a solicitation for real estate, Bob MacNeil.

13 That's John Fall.

14 We've talked about Paul Swanson. That's on the
15 cheat sheet. Also the signature stamp found in the
16 room where only he had access. John Paul, the name
17 John Paul, he had another fake ID with his picture this
18 time. That's 104-A at page 7.

19 So multiple companies, multiple bank accounts,
20 including co-mingled and warehouse bank accounts
21 throughout the country, fake names and aliases.
22 Multiple layers of concealment.

23 But there was a fourth step. The extensive use
24 of cash. John Fall used cash. He had lots and lots of
25 cash sent back to Broad Street. You heard some

1 testimony from Cielito Deayala, I believe. A package
2 came in the mail with cash in it and John Fall got that
3 package. But you also saw documents entered into
4 evidence.

5 Let's have 79-C, again from the George Jaquez
6 disks, his disks.

7 If you look at the documents entered into
8 evidence from George Jaquez, you'll see all the
9 warehouse bank account correspondence that he had with
10 these promoters of these various bank accounts. He
11 would ask that they write checks or send him money back
12 including in the form of cash. And this is one
13 example. In this case, asking to have sent back
14 \$26,000 in cash mailed to John Fall, attention John
15 Fall, urgent, at Comfort Dental on Broad Street.

16 81-A at page 5.

17 Another mailing of cash, \$5,500 to John Fall at
18 Comfort Dental. And note the special instructions by
19 John Fall. Please do not put your return address. Use
20 my, my Managed Skills instead, exclamation point.

21 81-B at 5. More cash being mailed back to him
22 at Comfort Dental, \$1,500, attention John Fall.

23 81-C at page 7. More cash back to John Fall,
24 \$2,000.

25 81-C at page 9. \$5,500 in cash back to John

1 Fall at Comfort Dental. And 81-D -- and these are just
2 some of the examples, members of the jury, 81-D, \$3,000
3 in cash. That's another layer of concealment, the
4 extensive use of cash to minimize the paper trail.

5 Another layer of concealment is that with
6 respect to all these identities he used multiple
7 mailing addresses not tied to Wheeler Ave. or tied to
8 Broad Street but addresses in Arizona and elsewhere
9 trying to create more distance between these entities
10 and where he resided.

11 He also used multiple e-mail addresses, multiple
12 e-mail addresses.

13 Another form of concealment is that when the
14 issue of NERH came up, when the IRS issued a summons
15 and a request for the funds that Lou Caccavaro held in
16 his escrow account, the Defendant provided false
17 statements to a Federal Court denying his interest in
18 NERH, even though you saw evidence that he is NERH. He
19 set it up, he ran it, he controlled it, he owned the
20 funds. He denied all of this in a filing in Federal
21 Court. And then he had a Peter Fettig write a letter
22 to Lou Caccavaro telling Lou Caccavaro not to turn over
23 the funds to the IRS and not to turn over information
24 to the IRS. And that's at 282-C at page 1.

25 Lou Caccavaro when he got this contact from the

1 IRS, he said that one of the first people he called was
2 John Fall because he knew that John Fall was a
3 representative of NERH. He also testified that John
4 Fall was the common contact he had with all of the
5 entities that he brought a suit against to determine
6 whose funds they were because it was John Fall behind
7 all of those entities.

8 So members of the jury, we're talking about
9 Count I. We're talking about his scheme to hide and
10 harass.

11 Let's turn to the harassment. Despite his best
12 efforts to create these multiple layers of concealment,
13 the IRS got leads. They got leads on his income.
14 There's those W-2s as well as some other information,
15 and they got leads on his wife's false returns. But
16 rather than come clean, rather than cooperate, the
17 Defendant tried to stall the audits and the
18 examinations, tried to impede and delay the
19 examinations. And the way he did that is he filed
20 frivolous paper, paper after paper both making
21 allegations as well as asking frivolous, frivolous
22 questions that he knew were frivolous, that he was told
23 were frivolous. Questions and statements that he's
24 sovereign, statement that he's not a United States
25 citizen, statements that the IRS only has jurisdiction

1 in Puerto Rico, questions asking what type of tax do I
2 owe when it's perfectly obvious from the paperwork that
3 it's the Federal income tax that's at issue.

4 He wasn't looking for answers. He was looking
5 to delay. He filed an \$8 million claim against the
6 agent who was trying to just do their job.

7 You heard from our first witness, Shauna
8 Henline, the senior technical coordinator at the
9 Frivolous Filer Unit in Ogden, Utah. The IRS set up a
10 whole unit to deal with this kind of paperwork. And
11 she testified that they send out what they call a soft
12 letter informing the Defendant and any taxpayer who
13 files such frivolous correspondence that what they're
14 doing is wrong; that their filings are frivolous; that
15 the tax laws of the United States require the filing of
16 returns and the payment of taxes; that the Federal
17 courts, the courts of law in this country have ruled
18 against your arguments over and over, but if you
19 continued on the path you have chosen you can be
20 prosecuted. Providing citations to statutes, providing
21 advice to seek counsel or attorneys or accountants.
22 And she testified the policy is usually to send one
23 notice but in the record are multiple, multiple letters
24 from the IRS telling him that all of this was nonsense,
25 all of this was wrong, all of this was not an accurate

1 statement of the law.

2 You know the Defendant's intent was not a
3 good-faith request for information by the
4 correspondence he had with Bill Harrigan during the
5 audit. There were multiple e-mails in which he states
6 really the purposes of its technology is to stop the
7 audit. This was his technology.

8 Let's just take a look at 302-B as one example.

9 Promising Bill that if he would only agree to do
10 it his way, all of this will go away. Having nothing
11 to do with the merits, having nothing to do with the
12 actual substance of the audit, but using his technology
13 maybe it will all go away as sure as the sun will rise
14 in the East. That's not good faith. That's not a good
15 faith, genuine, honest search for the truth. That's
16 not somebody who is genuinely looking for answers.
17 That's somebody who is looking to obstruct and impede.

18 You can put that down.

19 So that's Count I. One final count. Count II,
20 the tax evasion count, charges the Defendant with
21 evading payment of taxes between 2005 or '06 and 2010,
22 for the 1998, '99 and 2000 tax returns. The IRS worked
23 up their assessments and between 2005 and 2010 he
24 engaged in multiple acts of evasion.

25 The Court will instruct you that to prove this

1 charge the Government must prove three elements: That
2 the Defendant engaged in an affirmative act of evasion,
3 which is really any act the likely effect of which will
4 mislead or conceal; second, that he actually had a tax
5 due and owing; and third, that his conduct was willful,
6 that is, he intentionally violated a known legal duty.

7 As to the first element, did the Defendant
8 engage in affirmative acts of evasion? We've already
9 gone through that. All of the obstructive acts with
10 respect to multiple entities and shell companies, the
11 use of fake names and aliases, the use of multiple bank
12 accounts, the use of cash are all charged as
13 affirmative acts for Count II. So that's the first
14 element of tax evasion.

15 The second element is the tax due and owing.

16 And if we could have 425-A, please.

17 This is the summary by Agent Pleshaw, which is
18 largely based on the assessments rendered by the IRS
19 auditors. And for each of those years, there was a
20 substantial tax due and owing. The actual tax due and
21 owing is at these lines. Ten thousand and change for
22 1999; 4,700 for 2000; and about 27,000 for 1998.

23 Collectively and separately, each of these
24 amounts are a substantial tax. But when the IRS does
25 an examination, as you heard, when somebody doesn't

1 file, they file their substitute for return, which is a
2 zero return, and then they have W-2s and 1099s that
3 they work with. But that doesn't capture all of their
4 income necessarily. And in this case, John Fall had
5 additional payments going to him, and we saw that in
6 the warehouse accounts for '99 and 2000, the payments
7 going to Revenue Management Services.

8 So if we take a look at 425-C, this is a summary
9 by Agent Pleshaw in which those payments are added or
10 the taxes based on those payments are added. So that
11 for those years, he actually had a bigger tax due and
12 owing than was actually assessed. And if the 1998 year
13 is taken away, he still had a substantial tax due and
14 owing. So there is a substantial tax due and owing.

15 That brings us to the third element,
16 willfulness, the intentional violation of a known legal
17 duty.

18 One other point on the tax due and owing. Now,
19 you heard some questions and some testimony about the
20 payment, the collection suit, the payment of those
21 taxes for '98, '99 and 2000. There was a forced
22 collection action in 2011 and that appears on the
23 transcripts, but that's not relevant to the charge. As
24 the Judge will instruct you, so long as there was a tax
25 due and owing at the time the Defendant committed an

1 affirmative act, the tax due and owing element is
2 satisfied. He committed affirmative acts in 2006, '07,
3 '08 and '09, all at a time when he still had a tax due
4 and owing, and when he committed those affirmative acts
5 at a time he had a tax due and owing, the crime was
6 complete.

7 Now to willfulness. Was the Defendant's conduct
8 willful? Did he know of his legal duty and did he
9 intentionally violate it? The evidence is overwhelming
10 that he did. He knew what his duty was under the tax
11 laws. He filed taxes before. He was told by the IRS
12 what his duty was, which he already knew. This was not
13 a mistake. This was not a misunderstanding. He
14 willfully broke the law. And you further know that his
15 conduct was willful and not in good faith because of
16 all the hiding he engaged in.

17 The Court will instruct you that if you find
18 that the Defendant acted in good faith or had a
19 good-faith belief that he didn't have to file or that
20 he was in compliance with the law, then that's a
21 negation of willfulness. But looking at his conduct in
22 filing the frivolous paper that he knew was frivolous
23 and all those acts of concealment, that's not good
24 faith. Why would you go through such extraordinary
25 steps to hide your income, to go literally across the

1 country using bank accounts to hide and conceal if you
2 thought you were on the right side of the law? Why
3 would you engage in all that concealment and all that
4 hiding? You wouldn't if you thought you were on the
5 right side of the law. But he knew what the law was
6 and he was trying to hide from the law, and the
7 extraordinary lengths he went to to hide shows you that
8 his paper and all of his statements to the IRS were not
9 genuine, honest searches for the truth, which is what
10 the definition of "good faith" is as the Court will
11 instruct you, but rather a demonstration that he knew
12 exactly what he was doing, he knew what the law was and
13 he intentionally violated it.

14 More evidence that his conduct was willful and
15 not in good faith is the fact that he helped file false
16 tax returns for his wife. That's a fraud. That's not
17 good faith.

18 There's no evidence that he actually sought
19 advice from attorneys or accountants. If he really
20 thought he was on the right side of the law concerning
21 taxes, you'd think he would go and consult somebody
22 about this, but he didn't because he knew what the
23 answer would be. How many times did the IRS tell him
24 he could take appeals on any assessment, he can even go
25 to Federal Court and argue his case, but he refused to

1 do so because he knew what the answer would be. He
2 knew what the law was. And we've talked about the IRS
3 notices and warnings. Multiple notices and warnings.

4 Let's have that chart.

5 This is just a demonstrative, a summary of all
6 the notices that went into evidence, responses to his
7 claims, notices and warnings from the IRS telling him
8 what he already knew, that he had an obligation under
9 the tax laws, an obligation to follow the law. Notice
10 after notice, warning after warning telling him over
11 and over and over that he needed to comply; telling him
12 that he could be criminally prosecuted if he didn't;
13 citing to him the statutes in some of these letters on
14 where the legal duty to file can be found. Notice
15 after notice, warning after warning. He ignored all
16 these notices and continued to defy the law.

17 An example can be found at 60-D, an IRS response
18 to him early on in 2002 telling him that the tax laws
19 were passed by Congress, signed by the President,
20 telling him and informing him of what he already knew.
21 Telling him the role of the Internal Revenue Service,
22 which is not to debate the tax laws but to enforce
23 them. Telling him that he could be prosecuted.
24 Telling him that they cannot go on and on and engage in
25 frivolous correspondence with him responding to all of

1 his frivolous requests, which he knew. But the
2 Defendant ignored this notice and all the warnings.

3 On the issue of good faith and willfulness, the
4 Court will also instruct you that good faith is a
5 subjective standard, whether he actually held the
6 belief. But in determining whether he actually held
7 any good faith beliefs, you may consider whether those
8 beliefs are reasonable in determining whether he
9 actually held them. Were his claims reasonable? His
10 frivolous claims that the IRS only had jurisdiction in
11 Puerto Rico, that he wasn't a United States citizen,
12 his request of what type of tax do I owe when the forms
13 and the notices that were sent to him told him what tax
14 was at issue? That wasn't reasonable, and it shows you
15 that his true belief wasn't what he said in papers
16 filed with the IRS.

17 And the Court will also instruct you that
18 disagreement with the law is no justification, no
19 defense. It is the duty of everybody to obey the law
20 no matter how strong that disagreement might be. Isn't
21 that what this case is about? A Defendant who over the
22 course of a decade continually papered the IRS, refused
23 to pay his taxes, said in papers that he was done
24 paying taxes and he would never file again, simply
25 disagreed with the law. He knew what the law was. He

1 simply disagreed with it.

2 One final issue on willfulness with respect to
3 Count II. The Court will instruct you on willful
4 blindness, and basically this instruction tells you
5 that if the Defendant -- you may infer that the
6 Defendant had knowledge of a duty if you find that the
7 Defendant deliberately closed his eyes to a fact that
8 otherwise would be obvious to him.

9 Now, the Defendant wasn't blind to anything. He
10 knew exactly what he was doing. But if he was blind at
11 all, he was willfully blind. The IRS sends him notices
12 after notices, warnings after warnings telling him that
13 he could be prosecuted, among other things. He was
14 deliberately blind to the truth. He was told his
15 avenues for appeal and to take his claims to Federal
16 Court, but he refused to do so because he knew what the
17 answer would be. He was deliberately blind to the
18 truth.

19 He refused to seek counsel and instead the
20 accountants that you heard from at trial, Mr. Seidman
21 and Mr. Harrigan, told him that what he was doing was
22 wrong and warned him against his conduct. He was
23 deliberately blind to the truth.

24 So members of the jury, that's our case. As he
25 said in that document, 71-F, he hasn't filed since 1998

1 and he was never going to file again. In his
2 decade-long campaign to obstruct the IRS and to make
3 good on that promise, the Defendant defied the law over
4 many years; and for that, he must be held accountable.

5 So after you consider the evidence, after you
6 deliberate, we respectfully request that you return a
7 guilty verdict on all counts. Thank you.

8 THE COURT: Thank you, Mr. Kane.

9 Ladies and gentlemen, we'll take a brief recess
10 between the two closing arguments. We'll have you back
11 shortly. Continue not to discuss this case amongst
12 yourselves. You'll get this case very shortly when
13 you'll be allowed to discuss it. So continue with my
14 order not to discuss this case amongst yourselves until
15 such time as I instruct you.

16 Could I see counsel at sidebar.

17 (The jury is not present for the following:)

18 (Sidebar conference off the record.)

19 (Recess.)

20 (The jury is present for the following:)

21 THE COURT: Welcome back, ladies and gentlemen.

22 Mr. Fitzgerald.

23 MR. FITZGERALD: Thank you, your Honor.

24 Okay. Folks, I've got the -- we're going to try
25 something new. So I've got this on, and we'll make

1 sure it works.

2 It's going to not surprise you that I have a
3 little bit of a different take on what we've all
4 listened to for the past two weeks. I don't think that
5 should surprise you any.

6 During the eight days we've been here together
7 with Judge McConnell, we've had a few light moments and
8 some chuckles in between, but now it's more important
9 than ever for you to focus. I think you've done a good
10 job during the whole trial, it seems that way anyways,
11 but it's really important to focus now because what's
12 going to happen next is you're going to get to do your
13 hard work of deciding guilt or innocence in this case;
14 and you're going to have to take all of the information
15 that we've given to you into the jury room and make
16 that decision. And that's not a light decision. I
17 don't think you think it's a light decision, but I want
18 to make sure you understand that it's a very, very
19 important decision for Mr. Fall. Okay?

20 We can't forget that this case is about
21 Mr. Fall. It's personal to him. He's the man that's
22 being tried. He's the man that's charged with these
23 crimes, and what we're doing here and the decisions
24 that you make are going to affect him personally and I
25 want to make sure that that's not lost in everything.

1 Okay?

2 Ladies and gentlemen, the Government has
3 presented you with a number of presumptions. Okay?
4 They have presumed there's income in this case for
5 different people. They have presumed that there was
6 interference by different people with different
7 objectives. They have presumed Mr. Fall's
8 understanding of things. They have presumed frivolity.
9 They keep saying that there were frivolous filings.

10 They have a whole unit of the IRS, the frivolous
11 tax unit. Okay? Do you remember Shauna Henline told
12 you that the IRS decides what is frivolous. Okay? So
13 the Government decides what's frivolous and what's not
14 frivolous. Okay? They presume what is frivolous,
15 what's beneath them, what they -- they don't need to
16 address. What's frivolous, what's unwise, what's
17 foolish. It's the IRS that makes the decision of what
18 they think is foolish or unwise.

19 They presumed the origin of all these documents
20 that you see, most of them. Okay? The documents that
21 have been presented, we've seen on the screens. They
22 presumed where those things have come from.

23 They presumed associations, all of these
24 entities they say are associated with Mr. Fall. That's
25 what the testimony was or what they had labeled it as

1 during the trial. Today you heard these entities are
2 tied to Mr. Fall. So we've moved from just the
3 presumption of association to he's tied to these, he
4 created these. It's a presumption.

5 They presumed that information that's been
6 provided you is solid evidence that you need to -- I'm
7 sorry, solid evidence that will lead you to a
8 particular factual determination beyond any doubt.

9 But none of those presumptions that the
10 Government is relying on, that the Government has put
11 forward in front of you, none of those is more
12 important than the presumption of innocence Mr. Fall
13 has right now. Okay? And that carries with him all
14 the way into the jury room until you make a decision.
15 He's presumed innocent even if the Government -- I'm
16 sorry. The Government has made all these other
17 presumptions. They're not as important as that one.

18 The Government's case is only based on these
19 presumptions, and they want to convict him on these
20 presumptions. Okay? Now, they hope that you believe
21 them and you believe their take on the evidence to push
22 them over the line of reasonable doubt; but a
23 presumption is like an assumption, it's not quite
24 there. They're presuming things. They want you to
25 presume what they have failed to prove.

1 Folks, the documents, they presume where those
2 documents came from. You heard from George Jaquez.
3 George Jaquez finds this box on the second floor of
4 Broad Street. Okay? George Jaquez found that box.
5 George Jaquez files, the George Jaquez disk, the Jaquez
6 disk, the Jaquez box. That's what the Government keeps
7 telling you. It's the Jaquez box, it's the Jaquez
8 folder. And then they said the only person that had
9 access to the room was Mr. Fall. Well, that's not true
10 because Mr. Jaquez had access to that room. Okay?

11 Now, what were the items that were in the box
12 and how they did they get there? You don't know.
13 George Jaquez didn't know. They want you to presume
14 because of the contents of the box that it's Mr. Fall's
15 stuff and it came from Mr. Fall and he put it there.
16 That's a presumption.

17 Agent Dickerman. Agent Dickerman was the one
18 who picked up the boxes from the garage at Wheeler
19 Street. He came in and said that he got all this
20 stuff, this was all documents that Carmen Sanchez
21 provided. Okay? And then when he testified, he
22 testified to he didn't get them from Dr. Sanchez. They
23 were in Dr. Sanchez's garage. Dr. Sanchez wasn't
24 there. Never testified that he talked to Dr. Sanchez
25 about those documents. He got them from somebody else

1 that works for Dr. Sanchez, but they're in the garage.
2 So he's presuming that these are the documents that
3 trace back to Mr. Fall because he's presuming that they
4 came from Dr. Sanchez when they did not. You don't
5 know where those documents came from.

6 Ms. Henline, Shauna Henline testified to all the
7 tax assessments, all these IRS documents. You may not
8 remember because they went over and over and over and
9 all of us were -- I was nodding. Okay? They went all
10 through and she said, Yes, these are all IRS documents.
11 She said they were IRS documents because they look like
12 IRS documents, and she knows what IRS documents look
13 like. Okay? But hopefully, you were awake for the
14 very end of her testimony when she told us that those
15 documents didn't come from the IRS. Those documents
16 went to her to check, and they came from the
17 Government. I know the IRS and the Government is the
18 same thing but two separate places. She didn't go back
19 to the computer and print those out. She didn't go
20 back to the IRS computer and read them or double check
21 them. She got those documents from someplace else, and
22 the Government wants you to presume that those are the
23 actual documents from the IRS.

24 Those presumptions, the Government is asking you
25 to just presume this last link in how those documents

1 got from A to B should not be enough for you. It
2 should not be enough. Fill the links. Fill the line.
3 The documents went from A to B to C. Okay? Why didn't
4 the Government do that? There's no excuse for them not
5 to complete that line. Okay? Because there's no
6 excuse and they certainly had lots of opportunity to do
7 it, you shouldn't be satisfied with a presumption that
8 they came from a particular place.

9 Okay. Ms. Henline also testified that Mr. Fall
10 was adequately put on notice of his responsibilities to
11 file taxes, to pay taxes based on the letters that were
12 sent to him. Okay? Remember those letters a little
13 bit. I think you saw one during the closing.

14 Now, you saw this during the evidence. Okay?
15 The screens are all up? Thank you.

16 This was a letter from Mr. Fall in 2002 to the
17 IRS. I'm not going to go and underline it for you, but
18 this is the one where he asked about his tax liability.
19 This is back in 2002, back to the very beginning of all
20 of this. Okay? He asked about his tax liability.

21 Right in Section 1 -- I will point it out for you.
22 "Tell me what the tax liability is, please." Okay?

23 Now, the response to this letter is this one in
24 January of 2003. I believe that's four months later.
25 So four months later he gets a response. What does it

1 say? Tax laws are constitutional. The question he
2 asked at the beginning was, What's my tax liability?
3 The answer he got is tax laws are constitutional. Now
4 we know why he got this letter that says tax laws are
5 constitutional, because this letter came from a
6 computer. Somebody decided that this letter was
7 frivolous, stuck it in a "frivolous" folder, hit a
8 button, print, and that's what we get, a letter back,
9 non-responsive, tax laws are constitutional. But
10 Ms. Henline says that he was properly on notice and
11 adequately informed of his responsibilities. She said
12 that he was adequately informed of his responsibilities
13 because on the -- I believe it was the notice of
14 deficiency -- the deficiency notice came later.

15 And the deficiency notice would have told him
16 what his tax liability was. This is the Government's
17 chart, the big chart that was over here a little while
18 ago. Notice of tax deficiency came two-and-a-half
19 years later. So he was adequately on notice
20 essentially three years after he asked the question,
21 but a whole lot of stuff happened in between.

22 Now, the Government describes Mr. Fall as hiding
23 and harassing. Okay? But when you ask a simple
24 question and not only do you not get responses you get
25 notices of tax deficiency, harassment can be a two-way

1 street. Okay? If you were receiving those kind of
2 letters, you might feel harassed, too.

3 Now, they also said that he was on notice or
4 should have been on notice because he didn't seek out
5 any legal advice or he didn't seek out any accounting
6 advice. All right? You don't have any evidence that
7 he sought out advice from lawyers and accountants or
8 that he did not. That's not in evidence. Okay? You
9 don't know what he did. We don't know what he did.
10 Okay? For them to hang their hat on saying, well, he
11 had the opportunity or he should have or he could have
12 or he did, you don't know if he did or he didn't. All
13 we have are these letters going back and forth. Okay?

14 All right. The Government presumes that the
15 Defendant created and controlled and managed all of
16 these different entities. They had the nice chart
17 there with all these different entities. How many
18 documents have you seen that he created an entity? I
19 think it's two. They both lead back to Revenue
20 Management Services. None of the rest of them has been
21 substantiated based on a document or anything else
22 here. What they want you to do is presume, based on
23 all of these other documents that they got third hand
24 that he created these things and he controlled these
25 things.

1 Now, you can say that actually there was other
2 evidence that Carmen Sanchez told us he created all
3 these things. And we'll deal with Dr. Sanchez in a
4 second, but they haven't shown you any other evidence
5 that he created these different entities.

6 Folks, the Government told you in their closing
7 that Dr. Sanchez was credible in her testimony. She
8 was not credible in her testimony. I think I told you
9 at the beginning I'm going to have a different take on
10 things than they are. Well, that's a big one. That's
11 a huge difference of opinion on her credibility, and
12 I'll start with the part that I think should make it
13 easiest for you all to accept.

14 We had Cielito Deayala testify. She was the
15 former office manager. I believe she said that, you
16 know, she started working there with Dr. Sanchez. When
17 she first started working there, it was her and
18 Dr. Sanchez and one other person. Just three people in
19 the office. Nice, cozy little office. Obviously, you
20 know each other, you get along, talk to each other
21 every day. Okay? There's nothing to -- there was no
22 evidence presented that Ms. Deayala had any ax to grind
23 in this case. She had no ill will towards anybody.
24 There's no evidence that she said anything to you that
25 wasn't accurate or true. Okay?

1 She told you that she gets the bills, she gives
2 directions, she gets the checks, she brings them back
3 to Carmen, Carmen signs the checks and they get mailed.
4 There's no reason not to believe her that that happened
5 and that's the way it happened.

6 She told you that she didn't have access to the
7 accounts. She didn't have control over those accounts.
8 It was all Carmen.

9 Now, the next day -- and I'm sorry, because the
10 trial's been so long I can't remember the timing here.
11 Might have been Monday morning when Dr. Sanchez came
12 back and we talked to her about that, about the signing
13 of the checks. She kept saying that, No, there was a
14 stamp, that sometimes Cielito would stamp the checks
15 and send them out. Okay? That's just a lie. There is
16 no stamp. We looked at checks. You looked at checks.
17 You looked at dozens, if not over a hundred of checks
18 with Carmen Sanchez's signature on them. Not one
19 stamp. Okay? It's just plain -- it's just a plain
20 lie.

21 When Carmen talked about Cielito when she was
22 testifying about her and about her place in the office,
23 I don't know if you caught this, but she never referred
24 to her as Cielito. She never referred to her as
25 Ms. Deayala. She always said the office manager, the

1 office manager, the office manager. Okay? There's
2 something wrong there. There's a disconnect. When you
3 work with somebody that closely when you're in that
4 tight-knit little office just the three of you, and
5 then the office expands, yes, but it always goes back
6 to those were the folks who were there at the
7 beginning. Those were the folks you bonded with. And
8 she testifies "the office manager" like Cielito doesn't
9 exist anymore. She's not a person.

10 Well, she is a person, and she testified. And
11 she testified different from Carmen. She testified
12 truthfully, and Carmen did not. That's the best
13 example I can give you of why you shouldn't believe
14 what Carmen said.

15 Now, Carmen was very smart, very educated, very
16 ambitious. Okay? She absolutely knew what she wanted
17 to do. There should be no question. She went to
18 dental school, got out, became a dentist, started
19 practicing, saw a need in the community. Those were
20 her words, she saw a need in the community and opened
21 up Comfort Dental and it expanded and blossomed.

22 She bought the building at 1482 Broad Street.
23 Bought the building. Formed her own corporation or
24 entity that managed that building, Broad Street
25 Investments. She's a smart business woman. Okay?

1 She's not a dummy. All right? She knows what's going
2 on. But what did she tell you? "I don't know
3 anything. John doesn't have any part in our office. I
4 would just sign things because he told me to."

5 Those two things don't add up. As the smart
6 business woman, as the one who is trying to expand her
7 practice and make money and just become successful,
8 she's not also turning a blind eye to what Mr. Fall is
9 doing. That just doesn't make any sense. That's not
10 credible, and you shouldn't credit her testimony for
11 that.

12 She is in charge of Comfort Dental. All right?
13 She hires and fires. She has that authority. She told
14 you she's in charge of advertising. She decides where
15 they get supplies. She doesn't do the bills. She
16 delegates that authority to the office manager. She
17 probably doesn't clean teeth. I'm sure she delegates
18 that to the dental hygienist. She delegates lots of
19 different things. She delegates collecting the rent to
20 her uncle, Mr. Jaquez. But there shouldn't be any
21 question in your mind she's in charge. She owns
22 Comfort Dental; she's in charge of Comfort Dental.

23 Folks, she delegated a number of
24 responsibilities to a number of people that worked for
25 her. She testified to you that she did not delegate

1 any part of that to Mr. Fall. She told you that she
2 was the one that made sure that the documents got to
3 the CPAs for taxes. She made sure that all that
4 information was done. She signed the checks.

5 Let me take a step back because there's
6 something else you need to know about Carmen. After
7 this is all over, you know, Carmen came in here on an
8 immunity agreement. She wasn't going to testify, but
9 they said if you testify and if you testify truthfully,
10 we won't charge you. That's how she ended up on the
11 stand.

12 At the end of this, she pays off the IRS. She
13 still owns the two practices now. She owns the house
14 on Wheeler Street. She owns or has a part of the
15 property in the Dominican Republic. She has Broad
16 Street Investments. Okay? She owns a lot of stuff.
17 And if you want to go through all the papers, you can
18 see that Comfort Dental is doing more than 2 million a
19 year I think if you look at their taxes that have been
20 filed recently that are in there. She's very
21 successful. She's very well-to-do.

22 And on top of that, she's divorced from Mr. Fall
23 and she has the kids. So she's got everything. She's
24 got everything here.

25 So she has all that. She comes in here to

1 testify because of the immunity order and she gets on
2 the stand. What does she do? She doesn't take any
3 responsibility for any of this. Zero. She delegates
4 the responsibility of this. Cielito stamped checks. I
5 think the last thing she said was, It's all John's
6 fault. All of it. Not hers. All John's fault.

7 Now, folks, her testimony, her version is the
8 main support for the Government saying that John Fall
9 created all these entities, that he was associated with
10 all these entities, that he is tied to all these
11 entities. Okay? She is not credible. You shouldn't
12 believe her; and if you can't believe her, then we're
13 left with their presumptions.

14 Now, Agent Pleshaw testified and same thing. He
15 presumed these assumptions. He presumed these
16 associations. If you remember, on all of the different
17 summaries he had with him, associated with Fall,
18 associated with Fall. And I asked, What does that
19 mean? And he said, Well, the evidence is that he's
20 associated with all these different entities.

21 What he thinks the evidence is, what I think the
22 evidence is, the prosecution thinks the evidence is, is
23 not what the evidence is. It's what you think the
24 evidence is. Okay? So they want you to presume the
25 evidence is that he's associated with all these people

1 and today tied with all these entities. Okay? What
2 you have is presumptions. You don't have enough to
3 show that he's tied to these entities, he created them,
4 that he managed them.

5 Folks, the other -- and I think this is almost
6 more important. The other presumption I haven't talked
7 about yet is the presumption that the Government seems
8 to think that the rest of us are a little dim. Okay?
9 That we're not so up on top of, or watching what's
10 going on here. And I think that we start with this
11 slide here. Okay? It's on the ELMO. This is the --
12 if you remember, this is the slide that shows nothing.
13 It shows nothing. I tried to make it go away, but it's
14 still here. And it still shows nothing.

15 I asked Agent Pleshaw and eventually he agreed
16 with me that it doesn't show anything. Okay? The \$2.1
17 million, that is, as they said, the total amount of all
18 the money that went through all these different
19 accounts. And finally he did tell you, he admitted
20 that it includes money that was transferred between the
21 accounts. Okay? So if that's the case, what's the
22 reason for the \$2.1 million? It's not relevant to
23 anything here. Mr. Fall didn't put \$2.1 million in his
24 pocket. Carmen Sanchez didn't put \$2.1 million in his
25 pocket. Didn't show up on a tax return anywhere. It

1 is -- it's a slide that shows nothing, folks.

2 So what's the purpose of putting that total on
3 there? I'd suggest it's to mislead you. Okay? It's
4 deceptive. It's misleading. It's misleading. I can't
5 put it any nicer than that. Okay? Why put it on there
6 unless you want to pump up your case, the Government
7 does, and show you, the jury, wow, there's a lot of
8 money here, you better pay attention. This guy is a
9 bad guy. There's a lot of money here.

10 And just so you understand the whole transfer of
11 money back and forth, Stratford Management, I know you
12 may not be able to remember one account from the next
13 account, Stratford Management was one of these accounts
14 that Broad Street Investments was -- I'm sorry, that
15 Comfort Dental was sending money to for rent and then
16 Stratford Management was sending it back to Broad
17 Street Investments. Okay? Now, the rent for Comfort
18 Dental was \$4,500 a month. That \$4,500 went from
19 Comfort Dental to Stratford, and then from Stratford
20 back to Broad Street. So that single \$4,500 became
21 \$9,000 here. It doubles because it was transferred
22 twice. Okay?

23 Stratford Management, the identified
24 withdrawals, the figure 139,500, that's my handwriting,
25 by the way. That's the total of all the money that

1 went back to Broad Street Investments. Okay? If
2 that's the money that went to Broad Street Investments,
3 that means that it went to Stratford first. So that
4 means there's \$280,000, okay, in that slide that shows
5 nothing. Okay? That should give you an idea of the
6 level of double counting in this case. Okay? It's
7 deceptive. It's misleading.

8 More evidence that the Government thinks we're
9 not so quick, the fact sheets. They're fact sheets.
10 They show facts. Okay? That's true. They do show
11 facts. They show facts about these particular
12 accounts. All right? The question is are they facts
13 that matter in this case? Are they facts that are
14 relevant to this case? Are they facts that are going
15 to help you decide what's going on? All right.

16 So for Avigon, this particular Avigon account,
17 it says \$4.1 million went through there. That's great.
18 This is a warehouse account. More than one agent told
19 you a warehouse account is where a whole bunch of
20 people put money into. Okay? The \$4.1 million that's
21 on here, on this fact sheet has nothing to do with this
22 case. You can't look at the \$4.1 million and say, Oh,
23 that has to do with Mr. Fall because of X. It doesn't.
24 It's another big number. It's another big number the
25 Government stuck under your nose to say, Hey, look,

1 this guy is really bad. Look at all this money. Okay?
2 It's misleading.

3 But they didn't do it once. Here's the fact
4 sheet of Accurate Bookkeeping, \$2.5 million. There's
5 the fact sheet of Olympic Business Systems, \$6.7
6 million. Not the money from this case.

7 You can go through all these documents all you
8 want, and Agent Pleshaw already did, and I don't think
9 he could tell you how much of that was involved in this
10 case. Okay? So what's the purpose of showing you this
11 to begin with? Why did the Government put it into
12 evidence? It's ugly. It makes Mr. Fall look bad. He
13 didn't have anything to do with \$6.7 million. All
14 right? But they want you to take that on, attribute
15 that big number to him so that they can support their
16 presumption. They're fact sheets, but they're not so
17 relevant fact sheets.

18 Now, it's interesting the Government had said,
19 you know, Who banks this way? Okay. They said nobody
20 banks this way. We know that's not true because things
21 that they put in evidence was there's a whole bunch of
22 people in these warehouse banks. There's lots of
23 people that bank this way. Whether you think it's
24 legitimate or not legitimate, it's not nobody. There's
25 a whole bunch of people that bank this way. It's a

1 warehouse bank. It's not Mr. Fall's bank. It's a
2 warehouse bank.

3 Okay. Bear with me here while I, unfortunately,
4 try to just pound this point, please. The title of
5 this slide, and this was presented to you during the
6 Government's closing is "The Disposition of Funds Paid
7 by Comfort Dental to JV Services." Okay? That sounds
8 like it's pretty straightforward. But when Agent
9 Pleshaw testified, you remember that there's no
10 relationship between the 149 -- I'm sorry, the 142,000
11 on the left and the money going out on the right other
12 than one happened before the other.

13 So when the Government says this is the
14 disposition -- this right here is the absolute
15 disposition of those funds, to me that means I took the
16 paper from here and I put it here and then I moved it
17 over here. That's not what happened. In the middle of
18 all this, JV Services has money. Okay? I don't know
19 how much money. It had whatever money they had plus
20 \$142,000. So to say that the money on the right is the
21 disposition of those funds is not accurate. It's not
22 correct. It's misleading.

23 Transfers of money for the sale of 35 Forbes
24 Street. The money on the right is not the same as the
25 money on the left. Okay? The proceeds from the sale

1 of Forbes Street according to this is \$162,000.
2 There's no link that goes from Point A to Point B to
3 Point C. The money that goes to Avigon in these three
4 different accounts is not the same money that went in
5 to Washington Allocation originally. They're saying
6 this is to transfer money. It's not. It's different
7 money. Maybe some of it is the same money, but it's
8 not what they're saying it is. It's misleading.

9 Transfer of money from 37 Sagamore Street. I
10 don't think anybody remembers 37 Sagamore Street coming
11 into evidence. Okay? I don't. It's in there. It's
12 in the papers. Okay? It's in the papers that have
13 been generated in this case, this mountain of papers.
14 Okay? The papers in these boxes that are over here in
15 the back, the papers that are in the binders up next to
16 the Judge, it's in there, 37 Sagamore Street. Okay?
17 But for them to say that this money is this money is
18 just misleading. They can't say that. It's not true.

19 Last one, folks, on these. Okay? At some point
20 in 2002, \$437,000 went into Stratford Management and
21 then some point later \$155,000 went from there to
22 Office Services. The two dollar figures have nothing
23 to do with each other. Nothing to do with each other.
24 You can't say that that money is the money that's down
25 the line. It's not. It's different.

1 Folks, during the closing today, the Government
2 talked about, you know, who banks this way. We talked
3 about that a little bit already. They continued to say
4 that Mr. Fall is tied to these entities, that he
5 created these entities. They don't have proof of that.
6 It's their presumption. There's innuendo. There's
7 these e-mails. Okay? There's these letters that they
8 say came from him, but they don't -- they can't even
9 tell you where the documents came from, for sure. The
10 documents they came up with, the documents they came
11 across during the investigation but they can't tell you
12 whether the actual origin of them was Mr. Fall.

13 Folks, what the Government really wants to do
14 here, at least in part, is -- I'll try not to be too
15 presumptuous. Okay? But I'll tell you this. The
16 Government has not given you proof beyond a reasonable
17 doubt. What they've given you is a series of
18 presumptions and that they hope that you take those
19 presumptions and push it over the line. What did we
20 say? There's a mountain of paper, a ton of paper in
21 all this. It's not a ton of evidence. It's not a
22 mountain of evidence. It's a ton of paper. Okay? And
23 there's a difference.

24 One of the things that you should be wondering
25 about in all of this is, you know, where did all this

1 money go? Okay? Where did all this money go? I like
2 the Government saying that Mr. Fall made extensive use
3 of cash, made extensive use of cash. If you think not
4 so hard because it's pretty obvious there was one
5 incident with an envelope that had cash sticking out of
6 it. That was the evidence. There were other envelopes
7 that we don't know what was in them. So the extensive
8 use of cash? The evidence isn't there. The
9 insinuation is there. The innuendo is there. The
10 presumption is there, but not the evidence. Not the
11 facts and that's, frankly, another thing that Carmen
12 Sanchez wasn't so forthcoming about.

13 So where is all the money? Where is all the
14 cash, if you will? I don't know. It's not my job to
15 tell you, but you should wonder. It should be a
16 question. It should be a question that leads you to
17 some doubt. What happened to all this money? Okay?

18 Ultimately, folks, the determination you have to
19 go make now is a difficult one, but it's not a
20 determination of maybe or possibly or probably. It's
21 not I think so. The standard is beyond a reasonable
22 doubt. The Judge is going to tell you what that means,
23 but I'd suggest that if you're speculating or you're
24 not sure or all you have is the Government's
25 presumptions, you're not there. Okay? You're not

1 there. And the Government hasn't met its burden. They
2 haven't. They've made a lot of presumptions. They've
3 given you a lot of show and a lot of documents, a lot
4 of paper, but they haven't given you a lot of evidence.

5 I want to leave you with two thoughts. Two
6 thoughts. The first is relatively short. When I sit
7 down, the Government is going to be able to come back
8 up and talk to you for a few minutes giving their
9 commentary on my presentation which I took advantage of
10 for the Government. I just ask that when the
11 Government addresses some of the points that I've made
12 that you also consider in your mind the context in
13 which I made them and the point that I was making.
14 That's the first thing.

15 The second thing is last night I went to a
16 concert. I went to a band concert. Okay? And it was
17 my daughter's school band. Okay? And it was just
18 wonderful. Just wonderful. They were great. They
19 were very, very impressive and it was just great to
20 listen to and everything else. Well, you know, I can
21 tell you that because I'm a proud parent, okay, and I
22 like my daughter. It was the 5th grade band concert,
23 their first concert. And I'm sure if any of you were
24 there, what you would have heard was a lot of squeaks,
25 a lot of missed notes, a lot of flat, a lot of sharp

1 when there shouldn't have been. Okay? Your perception
2 of it would have been a little bit different from mine.
3 Okay? But I'm going to tell everybody it's wonderful,
4 because it's my daughter and I love my daughter. And
5 she tries hard on the clarinet, which is not a joy to
6 listen to practice, I will tell you, but she's my
7 daughter. That's why I latched on to that concert.
8 That's why I tell you it was great.

9 I tell you that the Government has asked you to
10 latch on to all of these presumptions, okay, and why.
11 Well, just like my daughter's concert, okay, they are
12 attached to this case. All right? It's their case. I
13 don't know if they love this case, but it's their case.
14 They own it. Okay? If there's any question in your
15 mind on that, look at all the agents here. Okay? Look
16 at all the agents here, all the people that have come
17 and testified, all the Government agents. There should
18 be no question in your mind that this is their case,
19 they own it, they love it, and they're invested in it.
20 They're invested in it.

21 So what you have is presumptions. Okay?
22 Presumptions are not enough for reasonable doubt.
23 That's what you should find. But that they're invested
24 in it; they love it. They want you to help kick it
25 over the line to beyond a reasonable doubt.

1 Folks, just having a mountain of papers isn't
2 enough to do that. I'd ask you to consider what I've
3 said and come back with a not guilty finding. Thank
4 you.

5 THE COURT: Thank you, Mr. Fitzgerald.

6 Mr. Kane.

7 Mr. Fitzgerald, make sure you shut the mike off.

8 MR. FITZGERALD: Thank you. I forgot.

9 MR. KANE: Thank you, your Honor.

10 To begin, counsel talks about the Government's
11 case built on presumptions. Two weeks of trial,
12 multiple witnesses, a lot of proof, yes, a lot of
13 documents but from multiple sources, multiple proof,
14 multiple corroborating evidence proving this
15 Defendant's guilt beyond a reasonable doubt. The
16 Government's case was hardly built on presumptions.

17 Let me work backward on a couple of points.
18 Counsel had mentioned toward the end of his
19 presentation that where's the money, where did all the
20 money get? Members of the jury, that's the point
21 especially with respect to Count I. The Defendant
22 obstructed the IRS's ability to even determine where
23 all this money went. We may never know. His success
24 in hiding his money through multiple layers of
25 concealment is not a defense. It's proof of the

1 charge.

2 Let's have some of these fact sheets that he
3 highlighted. And if I can have 408-A.

4 Counsel tried to attack the credibility of
5 several of the Government's summary exhibits. And this
6 was one of them, 408-A, a fact sheet with respect to
7 one warehouse account, suggesting that the Government
8 was somehow suggesting that the \$4 million was John
9 Fall's or associated or John Fall's income. Just the
10 opposite. During the examination of Michael Pleshaw,
11 the Government made the point that these are warehouse
12 bank accounts. It's not all of the Defendant's money.
13 His money was thrown in with everybody else's money in
14 an effort to conceal. That's the point. It most
15 definitely isn't all his money. But by putting his
16 money in with a lot of other people's money, it made
17 his money much more difficult to trace.

18 If you look at the exhibits right after this
19 summary, you will see that with respect to each of
20 these accounts Michael Pleshaw identified those of
21 Mr. Fall's, showing you exactly what he was able to
22 find in terms of his particular payments.

23 426-B, another summary that counsel has come
24 back to. During the direct examination of Michael
25 Pleshaw, it was elicited that these are not his income.

1 There's no way to determine whether all these transfers
2 are his income because they're co-mingled in different
3 people's accounts and different warehouse accounts.
4 This demonstrative is to show the level of concealment.
5 Every transfer, every deposit that the Defendant
6 engaged in is a measure of his obstruction because all
7 of these accounts were nominee accounts strewn all over
8 the country. As Michael Pleshaw testified on direct
9 and cross and redirect, it may be impossible to ever
10 find out how much this Defendant actually earned. But
11 we know in statements in insurance applications in his
12 internal documents on those George Jaquez disks that he
13 made money and by his own admission at least for a few
14 years over \$100,000.

15 Let's talk about Carmen Sanchez, and let's pull
16 up 287-C.

17 First, going to the Count III and IV, the aiding
18 and assisting counts, Defendant Fall has been charged
19 with aiding and assisting in the false corporate
20 returns. The Court will instruct you it does not
21 matter, and you should not consider, whether somebody
22 else, and in particular Carmen Sanchez, knew or did not
23 know of the falsity on the return. You shouldn't
24 consider whether anybody else other than Mr. Fall knew
25 about the falsity. Did she know? She may have known.

1 Her testimony was fairly credible. But did she turn a
2 blind eye? She might have. But to suggest that she
3 was the mastermind behind all of this? The evidence
4 was that she had office managers. She was a dentist.
5 She ran the dentistry. She did her advertising. And
6 the way it worked as demonstrated in this exhibit,
7 which is just an example, John Fall injected himself
8 with respect to these false payments. He had direct
9 contact with Cielito Deayala. He directed the payments
10 out of these accounts, out of the corporate accounts
11 for Comfort Dental, the checks were given from Cielito
12 to Carmen to sign.

13 Now, did Carmen know what was going on? Maybe
14 she did. You can think about that, but the Court is
15 going to instruct you it's not relevant to the charges.
16 It is relevant to her credibility, but the Government
17 hasn't presented this case based on Carmen Sanchez's
18 testimony alone. We presented evidence from bank
19 accounts and multiple witnesses. Her testimony was
20 corroborated by those other sources.

21 Counsel suggests that the Government's case is
22 essentially built on Carmen Sanchez's testimony, and
23 that's just not true and I think, members of the jury,
24 you know that.

25 Counsel talks about the presumption of income,

1 that there must be income in this case. Well, he
2 hasn't addressed Count II, tax due and owing by
3 Mr. Fall for the 1998, 1999 and 2000 tax years. He did
4 have income those years, and he did have a tax due and
5 owing which he evaded from 2005 to 2010.

6 The obstruction count doesn't require the proof
7 of income. In fact, the point of Count I is he made it
8 difficult to determine. That was his whole goal, and
9 he was successful in doing that through his multiple
10 layers of concealment. There's no presumption of
11 income with respect to the corporate returns. That has
12 nothing to do with unreported income. It's the false
13 expenses that appeared on those returns. And he didn't
14 dispute that they were, in fact, false because they
15 were false.

16 He said that there was a presumption that
17 Mr. Fall is connected to these entities. There's no
18 presumption that he's connected to these entities.
19 It's not just the George Jaquez disks, which we'll talk
20 about in a moment, but it's the bank accounts, for
21 example, the NERH bank account that he opened up at
22 Fidelity using his own name showing his direct tie to
23 that particular entity. It's the seized evidence from
24 Melissa Sugar out in Colorado where John Fall listing
25 his Ohio address is tied to almost all of these

1 entities, or a good chunk of them, at least eight, I
2 think. And then, of course, there is those documents,
3 the cheat sheet, the stamps and the George Jaquez disks
4 found in that room. George Jaquez testified in no
5 uncertain terms that only he and John Fall had access
6 to that room. George Jaquez obviously was not behind
7 all of this. The only person who had access that is
8 relevant is John Fall, and he was clear it was John
9 Fall's stuff because only he had access to it. And you
10 know that it was his stuff because if you look at the
11 documents taken off the disks, they're
12 self-identifying. It's John Fall's correspondence.
13 It's his authorship. It's his research on how to hide
14 and create entities and aliases. It's his research on
15 the super-secret state, Nevada, where he can have a low
16 profile.

17 So there's no question that the cheat sheet and
18 the paper coming off those disks was John Fall's not
19 only based on that evidence but the corroborating
20 evidence. The corroborating evidence of his anti-tax
21 views and papers that he filed with the IRS, his
22 refusal to pay over the better part of a decade.

23 Counsel made a point that the IRS should have
24 responded sooner to some of his paper, and they didn't
25 tell him what his tax liability was and he just wanted

1 to know what his tax liability was. Take a look at
2 some of the papers. He was claiming he didn't know the
3 type of tax. He was just creating frivolous paper.
4 And if you look at Exhibit 16 and its subparts, as well
5 as 17, you'll see the chronology of correspondence back
6 and forth between the IRS and the Defendant, and you
7 will see that the IRS told him repeatedly 1040 income
8 tax, that's what we're talking about. In addition,
9 they gave him a notice of proposed assessment telling
10 him this is how much you owe. Do you have any changes?
11 Should it be different? Then there was a notice of
12 deficiency. If he disagreed with that, he can go to
13 tax court; he can go to appeal to the IRS. He was told
14 what his tax liability was repeatedly. And you'll find
15 that if you need to in Exhibits 16-A through K, I
16 believe, and the subparts to Exhibit 17.

17 That the source of documents is presumed, we had
18 multiple sources of documents, as you know, bank
19 records, documents from banks, seized records not only
20 from Colorado but from the State of Washington where
21 the Defendant was using various nominees including
22 Wainright Associates, which also appears on his cheat
23 sheet.

24 Counsel talked about Shauna Henline. Is the
25 Defendant seriously suggesting that the tax records are

1 not authentic records? Shauna Henline testified she's
2 got 27 years in at the IRS. We took her through the
3 computer records from the IRS that printed out his
4 transcripts. There's no dispute as to the authenticity
5 of those records. If you look at the records, they
6 have a blue sheet on the front of them with a seal.
7 They're authentic certified records of the Treasury.
8 She testified that she recognized those records, that
9 the records are authentic, that they're kept in the
10 normal course of business, that they're the regular
11 practice of the IRS to make those records. And those
12 records, of course, are corroborated by all the other
13 evidence in the case including the correspondence
14 between the IRS and the Defendant.

15 It's corroborated by the Defendant's own
16 research on the George Jaquez disks in which he says,
17 "I'll never pay taxes again."

18 So to dispute the authenticity of the IRS
19 records is just without merit.

20 Counsel took issue with the Government's
21 argument that the Defendant never sought legal advice
22 or accountants' advice. There's no evidence that he
23 did. Quite the opposite. He kept pounding away at the
24 IRS no matter how many warnings he got to go seek
25 advice and to stop what he was doing. But there was

1 evidence that he got advice from accountants, from
2 David Seidman who told him people are -- in Danbury are
3 full of people like him who refuse to follow the law.
4 He was told by Bill Harrigan, he was pressuring Bill
5 Harrigan, CPA Bill Harrigan with at least two decades
6 of experience being an accountant, pressuring Bill
7 Harrigan to do what he was doing, papering the IRS.
8 Bill Harrigan said, "We're not doing that." You would
9 think that the Defendant would listen to Bill Harrigan
10 on that, but he refused to do so.

11 So members of the jury, at the end of the day,
12 the Government's case is not -- it's not built on
13 presumptions. It's built on proof that shows you
14 beyond a reasonable doubt that this Defendant committed
15 tax fraud for more than a decade, that he did it in
16 multiple ways. He not only concealed his own income,
17 but he also falsified the returns of his wife. He
18 obstructed audits. He filed frivolous paper with the
19 IRS to try to stop audits. He told his wife not to
20 show up at a summons. He filed false documents with
21 the Federal Court in Massachusetts denying his
22 ownership and control over NERH. The proof came from
23 multiple sources, multiple witnesses over two weeks.

24 So in light of that evidence, we again
25 respectfully request that after you consider all of it

1 and deliberate that you return a verdict of guilty on
2 all counts. Thank you.

3 THE COURT: Thanks, Mr. Kane.

4 Ladies and gentlemen, we'll take a mid-afternoon
5 break. We'll see you back in 15 minutes.

6 Could I see counsel.

7 (The jury is not present for the following:)

8 (Sidebar off the record.)

9 (Recess.)

10 (The jury is present for the following:)

11 THE COURT: Ladies and gentlemen, you have now
12 heard all the evidence. You've now heard the arguments
13 of all counsel. Now it is my obligation and I,
14 therefore, do instruct you on what law it is for you to
15 apply.

16 Ladies and gentlemen, you can put down your
17 notebooks and put down your pens because I'm going to
18 give you a copy of the jury instructions for your use.
19 And not all judges do that, but I tend to find it
20 helpful. Realize that the instructions as I give you
21 orally now are the instructions that you are to follow.
22 I'll give you a courtesy copy of the instructions for
23 your use in the jury deliberation room.

24 Ladies and gentlemen, you are the triers of the
25 facts. You alone must determine what the facts are in

1 this particular case. It's my duty to instruct you on
2 the law applicable to this case.

3 You must consider these instructions as a whole.
4 You should not choose one part and disregard another.
5 You must accept and apply the law as I give it to you
6 in its entirety, and this is true whether you
7 personally agree with the law or not. It would be a
8 violation of your oath you took as jurors to base a
9 decision on any version of the law other than that
10 contained in my instructions, just as it would be a
11 violation of that oath to return a decision upon
12 anything but the evidence in this case. It is not up
13 to you to decide what the law is or what it should be.
14 Your duty is to apply the law as I explain it to you.

15 As I have told you at the start of this trial,
16 Mr. Fall is presumed to be innocent of the accusations
17 against him. It is a fundamental principle of our
18 system of justice that every person accused of a crime
19 is presumed to be innocent unless and until his guilt
20 is established beyond a reasonable doubt. The
21 presumption is not a mere formality. It is a matter of
22 the utmost importance. The presumption of innocence
23 alone may be sufficient to raise a reasonable doubt and
24 to require the acquittal of a defendant.

25 The Defendant before you, Mr. Fall, has the

1 benefit of that presumption throughout the trial, and
2 you are not to convict him of a particular charge
3 unless you are persuaded of his guilt of that charge
4 beyond a reasonable doubt. Each charge carries its own
5 presumption of innocence; and even if you find the
6 evidence has overcome that presumption on one charge,
7 you must still apply it to the other charges unless and
8 until the evidence persuades you otherwise.

9 The presumption of innocence unless and until
10 proven guilty means the burden of proof is always on
11 the Government to satisfy you that Mr. Fall is guilty
12 beyond a reasonable doubt of the crime with which he is
13 charged. This burden never shifts to Mr. Fall. It is
14 always the Government's burden to prove each of the
15 elements of the crimes charged beyond a reasonable
16 doubt by the evidence and the reasonable inferences to
17 be drawn from that evidence.

18 Mr. Fall has the right to rely upon the failure
19 or the inability of the Government to establish beyond
20 a reasonable doubt any essential element of a crime
21 charged against him. If after fair and impartial
22 consideration of all the evidence you have a reasonable
23 doubt as to Mr. Fall's guilt of a particular crime, it
24 is your duty to acquit him of that crime. On the other
25 hand, if after a fair and impartial consideration of

1 all of the evidence you are satisfied beyond a
2 reasonable doubt of Mr. Fall's guilt of a particular
3 crime, you should vote to convict him.

4 In light of the fact that the Court struck
5 Mr. Fall's testimony, I remind you that a defendant has
6 an absolute right not to testify. Since the entire
7 burden of proof in this case is on the Government to
8 prove that Mr. Fall is guilty, no inference of guilt or
9 anything else may be drawn from the absence of
10 testimony from Mr. Fall.

11 It is not up to Mr. Fall to prove that he is
12 innocent. Under our system of law, any defendant has a
13 perfect right to say to the Government: You have the
14 burden of proving your case against me beyond a
15 reasonable doubt; I do not have to say a word.

16 You must determine whether the Government has
17 proved its case against Mr. Fall based solely on the
18 testimony of the witnesses who did testify and the
19 exhibits that were introduced.

20 Now, the mere fact that this case is brought in
21 the name of the United States of America does not
22 entitle the prosecution to any greater consideration
23 than that accorded to Mr. Fall. By the same token, it
24 does not mean that the prosecution is entitled to any
25 less consideration. All parties, whether the

1 Government or individuals, stand equal at the Bar of
2 justice.

3 Now, I will shortly explain the offenses with
4 which Mr. Fall is charged and the elements the
5 Government must prove in order to establish that
6 Mr. Fall is guilty of any of the four offenses.

7 In order for the Government to prove Mr. Fall's
8 guilt of an offense, it must convince you beyond a
9 reasonable doubt that it has proven each and every
10 element of that offense. Possibilities or even
11 probabilities are not sufficient. If the Government
12 fails to prove any one of the elements of an offense
13 beyond a reasonable doubt, then you must find Mr. Fall
14 not guilty of that particular offense.

15 On the other hand, if you are convinced beyond a
16 reasonable doubt that all elements of an offense with
17 which Mr. Fall has been charged have been proven to you
18 beyond a reasonable doubt, then you should find him
19 guilty of that offense.

20 As I've said, the burden is upon the Government
21 to prove beyond a reasonable doubt that Mr. Fall is
22 guilty of the charges made against him. It is a strict
23 and heavy burden, but it does not mean that Mr. Fall's
24 guilt must be proven beyond all possible doubt. It
25 does require that the evidence exclude any reasonable

1 doubt concerning Mr. Fall's guilt.

2 A reasonable doubt may arise not only from the
3 evidence produced but also from a lack of evidence.
4 Reasonable doubt exists when after weighing and
5 considering all of the evidence using reason and common
6 sense jurors cannot say that they have a settled
7 conviction of the truth of the charge.

8 Of course, Mr. Fall should not be convicted on
9 suspicion or conjecture. If for example, you view the
10 evidence in this case as reasonably permitting either
11 of two conclusions, one, that Mr. Fall is guilty as
12 charged, the other that Mr. Fall is not guilty, then
13 you must find Mr. Fall not guilty. It is not
14 sufficient for the Government to establish a
15 probability, even a strong one, that a fact charged is
16 more likely to be true than not true. That is not
17 enough to meet the burden of proof beyond a reasonable
18 doubt.

19 On the other hand, there are very few things in
20 this world that we know with absolute certainty. And
21 in criminal cases, the law does not require proof that
22 overcomes every conceivable doubt, but it requires
23 proof that overcomes every reasonable doubt.

24 Concluding my instructions on the burden then, I
25 instruct you that what the Government must do to meet

1 its heavy burden is to establish the truth of each part
2 of each offense charged by proof that convinces you and
3 leaves you with no reasonable doubt and thus satisfies
4 you that you can, consistently with your oath as
5 jurors, base your verdict upon it. If you so find as
6 to a particular charge against Mr. Fall, you will
7 return a verdict of guilty of that charge. If on the
8 other hand you think there's a reasonable doubt about
9 whether Mr. Fall is guilty of a particular offense,
10 then you must give Mr. Fall the benefit of the doubt
11 and find Mr. Fall not guilty of that offense.

12 The indictment in this case charges Mr. Fall
13 with four separate counts. Counts I, II, III and IV.
14 There are no other charges before you. You must
15 consider each of the four counts separately. The fact
16 that you find Mr. Fall guilty or not guilty on one
17 count does not mean that you should find him guilty or
18 not guilty on the other count.

19 Now, when I explain the charges in detail, you
20 will hear that the Government alleges certain offenses
21 were committed on or about or in or about certain
22 dates.

23 The proof need not establish with certainty the
24 exact date of an alleged offense. It is sufficient if
25 the evidence in the case establishes beyond a

1 reasonable doubt that the offense was committed on a
2 date reasonably near the date alleged.

3 I'm going to describe each charge for you and
4 then tell you the elements of the offense and then
5 define some terms for you. The four charges against
6 Mr. Fall were charged in an Indictment, which is simply
7 the description of the charges against the Defendant.
8 An Indictment is an appropriate method for the
9 Government to use in order to assert charges against an
10 individual.

11 In Count I, Mr. Fall is accused of corruptly
12 endeavoring to obstruct and impede the Internal Revenue
13 Service concerning his and Carmen Sanchez's individual
14 taxes, as well as Comfort Dental's corporate income
15 taxes in violation of 26 U.S.C. Section 7212(a).

16 In Count II, Mr. Fall is accused of tax evasion.
17 Specifically, that he did willfully attempt to evade or
18 defeat the payment of a substantial part of the taxes
19 due for the tax years 1998 through 2000 in violation of
20 26 U.S.C. Section 7201.

21 Now, Counts III and IV, Mr. Fall is accused of
22 aiding and assisting in the filing of false tax returns
23 for Comfort Dental for the years 2006 and 2007,
24 specifically with respect to business expense
25 deductions for advertising expenses totaling \$133,222

1 for 2006; and \$95,544 for 2007 while knowing and
2 believing that the expenses had not been incurred in
3 violation of 26 U.S.C. Section 7206(2).

4 You've heard in this trial and you will see in
5 many of the exhibits the name of Carmen Sanchez and the
6 name of other businesses, including Comfort Dental.
7 And although you may wonder what, if anything, happened
8 to these individuals or those entities, you should not
9 concern yourself with that, nor should you speculate
10 about that.

11 Ladies and gentlemen, the legality of the tax
12 laws is not an issue in this case. Congress
13 unquestionably has the authority to tax and to require
14 the filing of tax returns such as for income taxes.
15 Likewise, the Internal Revenue Service is authorized by
16 law as an agency of the United States to assess and
17 collect taxes. All citizens of the United States are
18 subject to Federal tax laws. Compliance with the tax
19 laws is not voluntary in the sense that it is optional.

20 Now, I'm going to turn to the discussion of the
21 law as applicable to each of the four counts.

22 Count I. Count I charges the Defendant, John J.
23 Fall, with corruptly trying to obstruct or impede the
24 administration of the Internal Revenue laws from in or
25 about February 1999, to in or about November of 2010.

1 It is against Federal law to corruptly endeavor
2 to obstruct or impede the administration of Internal
3 Revenue laws.

4 For you to find Mr. Fall guilty of this crime,
5 the Government must prove each of the following beyond
6 a reasonable doubt: One, first, that in or about the
7 dates charged, Mr. Fall did something in an effort to
8 obstruct or impede the due administration of the
9 Internal Revenue laws in the manner charged; and two,
10 second, that Mr. Fall did so corruptly.

11 To act corruptly means to act with the intent to
12 secure an unlawful advantage or benefit or financial
13 gain either for oneself or for another. To obstruct or
14 impede means to hinder, interfere with, create
15 obstacles or make difficult.

16 The Government does not have to prove that the
17 effort succeeded. The Government does not have to
18 prove that the United States suffered a tax loss. The
19 crime is complete upon the commission of one corrupt
20 act. You must unanimously agree on a specific corrupt
21 act. The act need not be criminal in nature. An act,
22 even if lawful in and of itself, can serve as a corrupt
23 act if it is done with the requisite intent.

24 Count II. Count II charges the Defendant, John
25 J. Fall, with attempting to evade and defeat the

1 payment of his Federal income taxes for 1998, 1999 and
2 2000. It is against Federal law to try to evade or
3 defeat the payment of Federal income taxes.

4 For you to find Mr. Fall guilty of attempting to
5 evade taxes, the Government must prove the following
6 beyond a reasonable doubt: One, that Mr. Fall owed
7 substantially more Federal income tax than zero for the
8 years 1998 through 2000; second, that Mr. Fall
9 willfully attempted to evade or defeat the assessment
10 of this tax; and third, that Mr. Fall committed an
11 affirmative act in furtherance of this willful attempt.

12 A person acts willfully if the law imposed a
13 duty on him, he knew of the duty, and he voluntarily
14 and intentionally violated that duty.

15 If Mr. Fall acted in good faith, he did not act
16 willfully. A good faith belief is one that is
17 genuinely and honestly held. The burden to prove
18 Mr. Fall's state of mind, as with all other elements of
19 the crime, rests with the Government. This is a
20 subjective standard. What did Mr. Fall actually
21 believe, not what a reasonable person should have
22 believed. However, you may consider the reasonableness
23 of Mr. Fall's belief in deciding whether he actually
24 held the belief. Innocent mistakes caused by the
25 complexity of the Internal Revenue Code or negligence,

1 even gross negligence, are not enough to meet the
2 willfulness requirement, but philosophical disagreement
3 with the law or belief that the tax laws are invalid or
4 unconstitutional does not satisfy good faith and does
5 not prevent a finding of willfulness. It is the duty
6 of every person to obey the law.

7 A person may not be convicted of Federal tax
8 evasion on the basis of willful omission alone. He
9 must also have undertaken an affirmative act of
10 evasion. The affirmative act requirement can be met by
11 the filing of a false or fraudulent tax return that
12 substantially understates taxable income or by making
13 false entries or invoices or documents. The
14 affirmative act requirement can be met by the filing of
15 a frivolous tax return that substantially understates
16 taxable income, by the filing of a false form W-2, or
17 by other affirmative acts of concealment of taxable
18 income such as keeping a double set of books, making
19 false entries or alterations or false invoices or
20 documents, destroying books or records, concealing
21 assets or covering up sources of income, handling one's
22 affairs so as to avoid keeping customary records and/or
23 other conduct whose likely effect would be to mislead
24 the Internal Revenue Service or conceal income.

25 You must agree on a specific affirmative act.

1 If a motive to evade or defeat the tax assessment or
2 payment plays any part in an affirmative act, you may
3 consider it even if the affirmative act serves other
4 purposes as well, such as privacy or concealment from
5 parties other than the IRS.

6 Willful intent or guilty knowledge may be
7 inferred from the secretive or irregular manner in
8 which a transaction is carried out.

9 In deciding whether Mr. Fall knew of a duty, you
10 may infer that he had knowledge of it if you find that
11 he deliberately closed his eyes to something that
12 otherwise would have been obvious to him.

13 In order to infer knowledge, you must find that
14 two things have been established. First, that Mr. Fall
15 was aware of a high probability that the duty existed;
16 second, that Mr. Fall consciously and deliberately
17 avoided learning of the duty, that is to say that
18 Mr. Fall willfully made himself blind to the existence
19 of the duty. Mere recklessness, negligence or mistake
20 in failing to learn the duty is not sufficient. There
21 must be a deliberate effort to remain ignorant of the
22 duty.

23 You may not find that Mr. Fall acted willfully
24 if you find that he actually believed that he had no
25 duty and that his belief was not based on philosophical

1 disagreement with the tax laws or a belief that the tax
2 laws are invalid or unconstitutional.

3 Mr. Fall's attitude toward the Internal Revenue
4 Service or the reporting and payment of taxes generally
5 may also be considered by you in determining his intent
6 with respect to each of the allegations contained in
7 the Indictment.

8 The Government does not have to prove the exact
9 amount of Federal income tax due and owing. The
10 Government is required to establish only that Mr. Fall
11 owed a substantial amount during the year or years in
12 question and at the time he committed an affirmative
13 act. Whether or not the amount owed is substantial is
14 a question for you to decide based on the facts and
15 circumstances in this case.

16 Counts III and IV. Counts III and IV charges
17 the Defendant, John J. Fall, with aiding and assisting
18 in the preparation and filing of false corporate tax
19 returns by Comfort Dental for the tax years 2006 and
20 2007. Counts III and IV charge the same offense but
21 for different tax years. Count III concerns tax year
22 2006. Count IV concerns tax year 2007. You must
23 consider each count separately.

24 In order to prove Mr. Fall guilty of Counts III
25 and IV as charged in the Indictment, the Government

1 must prove each of the following beyond a reasonable
2 doubt: One, that Mr. Fall advised or assisted in the
3 preparation of a tax return, which was subsequently
4 filed; and, two, that the tax return was false or
5 fraudulent as to any material matter; and three, that
6 Mr. Fall acted willfully.

7 The first element that the Government must prove
8 beyond a reasonable doubt is that Mr. Fall advised or
9 assisted in the preparation of a tax return which was
10 subsequently filed with the Internal Revenue Service.
11 It is not required that the Government prove that
12 Mr. Fall actually prepared or signed the return in
13 order to prove that he aided in the preparation. Proof
14 that Mr. Fall knowingly provided false information or
15 directions with the expectation that the information he
16 provided would be used to file a tax return is
17 sufficient to satisfy this element.

18 The second element that the Government must
19 prove beyond a reasonable doubt is that the return was
20 false as to a material matter. An income tax return
21 may be false not only by reason of understatement of
22 income, but also because of an overstatement of lawful
23 deductions or because deductible expenses were
24 mischaracterized on the return.

25 The false statement in the return must be

1 material. This means that it must be essential to an
2 accurate determination of Comfort Dental's tax
3 liability.

4 The third element is that Mr. Fall acted
5 willfully. I've already defined "willfully" for you.
6 A person acts willfully if the law imposed a duty on
7 him, he knew of the duty, and he voluntarily and
8 intentionally violated that duty. It does not matter
9 and you should not consider whether anyone other than
10 Mr. Fall knew or did not know of any falsity on the
11 return.

12 The word "knowingly" as that term has been used
13 from time to time in these instructions means that the
14 act was done voluntarily and intentionally and not
15 because of a mistake or an accident.

16 Now that you know what it is that the Government
17 must prove and what the standard of proof is to be
18 applied, the next question is how do you determine
19 whether the Government has proven any or all of the
20 charges beyond a reasonable doubt. Obviously, you must
21 make a determination solely from the evidence properly
22 before you and from all reasonable and legitimate
23 inferences to be drawn from that evidence.

24 The evidence that is properly before you is the
25 testimony of witnesses and the exhibits that I have

1 admitted into evidence. From the evidence, you may
2 draw whatever conclusions are reasonable under the
3 circumstances. The evidence that is properly before
4 you does not include the following. The evidence does
5 not include the following: Comments or statements by
6 attorneys; documents, photographs or other items which
7 may have been referred to but have not been admitted
8 into evidence; anything you have heard or seen outside
9 of this courtroom regarding the events in question or
10 the participants in this case; and fourth, anything I
11 have instructed you to disregard, including the
12 Defendant's testimony.

13 As to the testimony of witnesses, your principal
14 task is to determine the credibility of witnesses and
15 the weight you give to the testimony of each. In
16 making that determination, there are a number of
17 factors that you may consider. One, the opportunity or
18 lack of opportunity the witness had to acquire
19 knowledge of the facts about which the witness
20 testified. In other words, was the witness in a
21 position to have accurately perceived the facts that
22 the witness related to you?

23 Two, the reliability or unreliability of the
24 witness's memory. In other words, did the witness have
25 a clear recollection of what happened, or was the

witness's memory uncertain or unclear?

Three, the witness's appearance on the stand.

Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously?

Four, the probability or improbability of the witness's testimony. Did what the witness had to say sound reasonable or implausible, or did it appear to be highly unlikely or impossible?

Fifth, whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial, or did the witness have some stake in the outcome or some reason to favor one side or the other?

Now, the fact that a witness may be employed by a Government or law enforcement agency does not by itself mean that you should give that witness's testimony any greater or any lesser weight simply because of that fact. You should assess the credibility of testimony of such a witness by applying the same factors you would with respect to any other witness.

In evaluating the testimonial evidence, remember that you are not required to believe something to be a

1 fact simply because a witness has stated it to be a
2 fact and no one has contradicted what the witness said.
3 If in the light of all the evidence you believe that
4 the witness is mistaken or has testified falsely or
5 that he or she is proposing something that is
6 inherently impossible or unworthy of belief, you may
7 disregard that witness's testimony even in the absence
8 of any contradictory evidence. You must decide which
9 witnesses to believe and which facts are true. To do
10 this, you must look at all the evidence drawing upon
11 your common sense and personal experience.

12 Just because there may be more witnesses
13 testifying on one side of an issue than on the other
14 does not mean that the weight of the evidence lies in
15 favor of the greater number of witnesses. Once again,
16 it is the credibility or the quality of the testimony
17 that determines where the weight of the evidence lies.

18 In addition to assessing the credibility of the
19 witnesses and the weight to be given to their
20 testimony, you should also evaluate the exhibits that
21 you will have with you in the jury room. Examine them
22 and consider them carefully. However, bear in mind
23 that merely because an exhibit has been admitted into
24 evidence does not mean that you are required to accept
25 it at face value. Like the testimony of a witness, the

1 significance of an exhibit or the weight you attach to
2 it will depend upon your evaluation of that exhibit in
3 light of all the facts and circumstances of the case.

4 Now, as I mentioned previously, you may consider
5 only the evidence that is properly before you.
6 However, that does not mean that in determining the
7 facts you're limited to the statements of the witnesses
8 or the contents of the exhibits. In reaching your
9 conclusions, you are permitted to draw from the facts
10 that you find have been proven such reasonable
11 inferences as seem justified in the light of your
12 experience.

13 Inferences are deductions or conclusions which
14 reason and common sense lead you to draw from the facts
15 which have been established by the evidence in this
16 case. Such evidence is sometimes called circumstantial
17 evidence.

18 To put it another way, a fact may be proved
19 either by direct evidence or by circumstantial
20 evidence. Direct evidence include such things as the
21 testimony of an eyewitness who personally observed the
22 fact in question, or a photograph or a document showing
23 the actual thing described. Circumstantial evidence
24 consists of proof of a series of facts or circumstances
25 from which the existence or non-existence of another

1 fact can be reasonably inferred.

2 For example, if you go to bed at night on a
3 clear and dry night and you wake up and you find that
4 the pavement outside is wet, you may infer that it
5 rained during that night, even though you did not see
6 the rain fall.

7 The law makes no distinction between direct and
8 circumstantial evidence concerning the weight to be
9 given each. It is for you to decide how much weight to
10 give any evidence. However, the law does require that
11 any fact required to convict Mr. Fall be proven beyond
12 a reasonable doubt.

13 Now, as I have said to you, it's up to you to
14 determine the facts of this case. You should not
15 determine anything that I have said or done during this
16 trial as expressing an opinion on my part as to what
17 the facts in this case are. I have not intended to
18 express any such opinion and you should not be
19 concerned about what my opinion might be regarding the
20 facts. That is solely a matter for you to decide.

21 During this trial, there have been occasions
22 where the attorneys have objected to a question that
23 was asked of a witness. You should not penalize an
24 attorney or, more importantly, his client for
25 objecting. It is the attorney's right and duty to

1 protect the client's interests by objecting to what the
2 attorney believes is evidence that does not satisfy the
3 requirement of the Rules of Evidence.

4 If I sustained the objection, it's important
5 that you not speculate about what the answer to the
6 objected to question might have been. By sustaining
7 the objection, the Court has determined that the
8 evidence should not be considered by you.

9 Now, your verdict must be based solely on the
10 evidence developed at trial or the lack of evidence.
11 Neither bias in favor of any person or cause, prejudice
12 against any person or cause, nor sympathy of any kind
13 should be permitted to influence you in the course of
14 your deliberations. You may not consider any personal
15 feelings you may have about the race, religion,
16 national origin, sex or age of Mr. Fall or any witness.
17 It would be equally improper for you to allow any
18 feelings you might have about the nature of the crimes
19 charged to interfere with your decision-making process.

20 All that Mr. Fall and the Government are
21 entitled to or for that matter expect is a verdict
22 based upon your fair, scrupulous, conscientious
23 examination of the evidence before you and your
24 application of the law as I have explained it to you.

25 The question of possible punishment of Mr. Fall

1 is of no concern to you and should not in any sense
2 enter or influence your deliberations. The duty of
3 imposing sentence rests exclusively upon me. Your
4 function is to weigh the evidence in the case and to
5 determine whether or not Mr. Fall is guilty beyond a
6 reasonable doubt solely upon the basis of the evidence.
7 Under your oath as jurors, you cannot allow a
8 consideration of the punishment, which may be imposed
9 upon Mr. Fall if he is convicted, to influence your
10 verdict in any way or in any sense enter into your
11 deliberations.

12 Now, in order to return a verdict in this case,
13 all 12 of you must agree as to what the verdict will
14 be. You cannot return a verdict of either guilty or
15 not guilty with respect to any charge against Mr. Fall
16 unless your decision is unanimous. Therefore there are
17 two things that you should keep in mind during the
18 course of your deliberations. On the one hand, you
19 should listen carefully to what your fellow jurors have
20 to say and you should be open-minded enough to change
21 your opinion if you become convinced that your opinion
22 had been incorrect. On the other hand, you must
23 recognize that each of you has an individual
24 responsibility to vote for the verdict that you believe
25 is the correct one based on the evidence that has been

1 presented and the law as I have explained it to you.

2 Accordingly, you should have the courage to
3 stick to your opinion even though some or all of the
4 other jurors may disagree as long as you have listened
5 to their views with an open mind.

6 Now, I'm going to appoint Juror Number 1,
7 Ms. H█████, as the jury foreperson. She will preside
8 over the deliberations and she will speak on behalf of
9 the jury here in court. You will discuss this case
10 with your fellow jurors to reach agreement if you can
11 do so. Your verdict must be unanimous, meaning all of
12 you must agree. Each of you must decide this case for
13 yourself, but you should do so only after you have
14 considered all of the evidence, after you've discussed
15 it fully with the other jurors and listened to the
16 views of your fellow jurors. Do not be afraid to
17 change your opinion during the course of deliberations
18 if the discussion persuades you that you should. Do
19 not come to a decision simply because other jurors
20 think it is right.

21 If it becomes necessary during your
22 deliberations to communicate with me, you may send a
23 written note through the Court security officer, Gary
24 Palumbo, and the note must be signed by the foreperson.
25 No member of the jury should every attempt to contact

1 me except by a signed writing, and I will communicate
2 with any member of the jury on anything concerning the
3 case only in writing or here in open court.

4 Now, the Court has prepared a verdict form for
5 you. It is a rather simple form that I will go over
6 with you. After you've reached a unanimous agreement
7 on a verdict, your foreperson will fill in the form
8 that has been given to you, sign it and date it, and
9 you're to advise the Court security officer at that
10 time that you are ready to return to the courtroom to
11 return your verdict.

12 So you'll have this with you. It's rather
13 simple. It's the question of not guilty or guilty as
14 to the four counts. As to Count I, the charge of
15 attempting to interfere with the administration of the
16 Internal Revenue laws, we, the jury, unanimously find
17 the Defendant, John J. Fall, not guilty or guilty.
18 Once you've reached a unanimous verdict on that count,
19 the jury foreperson should check the appropriate box.

20 Move on to Count II. As to Count II, the charge
21 of attempting income tax evasion, we, the jury,
22 unanimously find the Defendant, John J. Fall, once
23 you've reached a unanimous verdict as to that count,
24 the foreperson should check guilty or not guilty.

25 Then the same for Counts III and IV -- well,

1 I'll read them. As to Count III, the charge aiding and
2 assisting in the filing of false returns for Comfort
3 Dental for the tax year 2006, we, the jury, unanimously
4 find the Defendant, John Fall, check either not guilty
5 or guilty. Then as to Count IV, the same charge for
6 tax year 2007, we, the jury, unanimously find the
7 Defendant either not guilty or guilty.

8 Once you've reached a unanimous verdict on all
9 four counts, the foreperson signs below, dates the
10 form, informs Officer Palumbo that you've reached a
11 unanimous verdict, and the Court will call you into the
12 courtroom shortly to return your verdict.

13 I've instructed you as to what the law is that
14 governs your deliberations. I'll send a copy of these
15 instructions back in with you for you to have, and I
16 just want to ask very briefly to see counsel at
17 sidebar.

18 (Side-bar conference.)

19 THE COURT: Mr. Kane, any objections to the jury
20 instructions? Mr. Bender?

21 MR. BENDER: Just on the evasion of payment, I
22 think you said evasion of assessment. It's not evasion
23 of assessment.

24 MR. FITZGERALD: I didn't bring it with me.

25 MR. BENDER: I wrote it down over there.

1 (Pause.)

2 MR. BENDER: Page 9.

3 THE COURT: That should be W-2, not W-4, right?

4 MR. KANE: I think it is correct.

5 THE COURT: Any other objections for the
6 Government?

7 MR. BENDER: No.

8 MR. FITZGERALD: Your Honor, I'm objecting to on
9 page 7 the tax laws are legal instruction. Your Honor,
10 usually when these instructions are included is when
11 there is evidence presented by the defense that taxes
12 are unconstitutional or are not legal for one reason or
13 another. The only hint of that in this case is buried
14 in the papers that the Government put into evidence.
15 And I think over my objection, initially anyways, not
16 by the defense, your Honor, so the only basis of this
17 is the Government's own opening the door for it. I
18 don't think you can put into evidence and then get a
19 jury instruction to support that when it's not part of
20 the defense.

21 THE COURT: I've had discussions with counsel
22 about that. The Court ruled that the evidence that's
23 in this case is admitted evidence included statements
24 by Mr. Fall in writing where he challenged the
25 constitutional legality of the tax laws in this

1 country. Because that issue is before this jury, the
2 Court found it is appropriate and required, actually,
3 to instruct them on the law in that regard. So your
4 objection is overruled.

5 Any other objections?

6 MR. FITZGERALD: No, your Honor.

7 THE COURT: I will then just go back, I'll take
8 the hit and tell them I misspoke and I'm going to read
9 the beginning part of Count II.

10 (End of sidebar conference.)

11 THE COURT: Ladies and gentlemen, it appears all
12 counsel have pointed out to me, there's so many
13 checking, that I left one phrase out when I read one
14 section to you so just so that we're clear, in Count
15 II, attempting income tax evasion, the charge under
16 Count II, I read to you the three elements. I'm going
17 to read the three elements to you again in their
18 entirety and I'll say the phrase that I left out the
19 first time.

20 In order for you to find Mr. Fall guilty of
21 attempting to evade taxes, the Government must prove
22 the following beyond a reasonable doubt: First, that
23 Mr. Fall owed substantially more Federal income taxes
24 than zero from the years 1998 through 2000; second,
25 that Mr. Fall willfully attempted to evade or defeat

1 the assessment or payment of his taxes; and third, that
2 Mr. Fall committed an affirmative act in furtherance of
3 this willful attempt. Apparently I left the words "or
4 payments" out when I read it. It's correct on the
5 form.

6 Anything further, counsel?

7 MR. FITZGERALD: No, your Honor.

8 MR. KANE: No, your Honor.

9 THE COURT: Thank you for that.

10 Ladies and gentlemen, it does not make any sense
11 to begin deliberations at this hour. We're under all
12 sorts of guidelines to close down at the appropriate
13 time and whatnot. So I'm going to have to have you
14 report back at 9:30 to begin your deliberations. It's
15 going to be a hard one, because now you have heard all
16 the evidence and now you have heard the arguments and
17 now you have been instructed on the law, so I would
18 imagine it's going to be hard not to want to discuss
19 this case. Know that the best people to discuss this
20 case with are going to be the 12 of you, and you can't
21 do that until Monday morning.

22 So I need for you to continue to not discuss
23 this case with anyone. I'm sure family and friends are
24 going to want to discuss it with you, and you really
25 have to, and I instruct you, that you must stay away

1 from discussing this with anyone.

2 In addition, please don't do any independent
3 research. If you feel confused by anything right now
4 or whatnot, you are not allowed to do any independent
5 research. It would mess the system up entirely if you
6 were to do anything like that, and I instruct not to do
7 that. If there are questions that occur during
8 deliberations that the Court can assist you with, write
9 down the question, the foreperson will sign it, and I
10 will attempt to deal with it if I need to, but do not
11 this weekend do any independent research.

12 If there's anything about this case in the
13 media, please look the other way and avoid any
14 attention to it. Please don't say anything -- don't
15 Instagram or Tweet or Facebook or, I don't know, there
16 are probably other things out there by now.

17 Enjoy the weekend. And what will happen Monday
18 morning is you'll gather as normal. I'm required to
19 bring you in here first. I count you. I don't know if
20 you notice that when you walk in. I have to count all
21 of you, assure that you're here, make sure that you
22 followed my orders. That will take two minutes, and
23 then we will send you on your way and we'll wait to
24 hear from you till then.

25 Mr. P [REDACTED], I'm going to ask you to stay with

1 us on Monday. We don't know what could happen over the
2 weekend. I'm going to tell you now that I'm going to
3 ask you to, as the alternate, when the jury does begin
4 deliberations I'm going to have another room set for
5 you. There have been times in the past, as unlikely, I
6 hope, as it may be where a juror becomes disabled
7 during deliberations. If that's the case, we'll deal
8 with it, but it will involve you and you're the only
9 person that can serve that role. So I ask you to come
10 back. Gather as usual Monday morning. After I excuse
11 the jury, we'll have another room set for you. You
12 might want to bring a book or something. I'll sort of
13 forewarn you. And we'll go from there.

14 No questions about the case or the trial, but
15 any administrative questions about timing or what your
16 duties are?

17 Great. You will have your notebooks in the jury
18 room with you. Vicky will on Monday prepare all of the
19 exhibits. The attorneys will spend some time now,
20 which is the other reason it doesn't make sense to
21 begin, going through it, making sure that only the
22 admitted exhibits are on the cart. They'll all come
23 into you then, along with your notebooks, along with
24 the jury instructions, the jury verdict form. And
25 generally, there might be some things if you want them,

1 flip charts and things if there's writing or pads or
2 whatever you might need.

3 Yes, Ms. B [REDACTED]?

4 THE JUROR: Is there to be one copy of the jury
5 instructions?

6 THE COURT: Well, you know, it's surprising you
7 should ask that. I've only ever sent one back and then
8 the last jury we had asked for 12 copies; so if you'd
9 like multiple copies, I'll send multiple copies back.
10 I see a few of nods, but, sure, I'll send multiple
11 copies back. That way you won't have to ask. If you
12 need them, great. If not, you can just put them aside,
13 but I will send multiple copies of the jury
14 instructions back. I'm not copying all of the
15 exhibits. You get one of those.

16 THE CLERK: And neither am I.

17 THE COURT: Ladies and gentlemen, thank you so
18 much for your service. Enjoy the weekend, and we'll
19 see you back Monday morning.

20 (The jury is not present for the following:)

21 (Sidebar conference off the record.)

22 (Sidebar conference.)

23 THE COURT: Anne, can we go on the record now.

24 We're going to mark for identification the
25 copies of the slides, the non-exhibit slides that

1 Mr. Kane used during his closing.

2 MR. KANE: Exhibit 450 entitled, "The Many
3 Entities and Shell Companies of John Fall." Not in
4 order, 454, "Who am I? The Many Fake Names and Aliases
5 of John Fall." 453, "Who Banks This Way? The
6 Transfers Between Accounts." 452, "Who Banks This
7 Way?" 451, "Changing Companies Over Time to Evade
8 Detection." And 455, "IRS Notices and Warnings."

9 THE COURT: Thanks. We're off the record.

10 (Discussion off the record.)

11 (Adjourned at 4:20 p.m.)

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C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk on February 16, 2016, and incorporating redactions of personal identifiers in accordance with the Judicial Conference policy. Redacted characters appear as a black box in the transcript.

/s/ Anne M. Clayton

Anne M. Clayton, RPR

February 16, 2016

Date